

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

24 s. 660.417, F.S.; revising provisions relating to
25 investment of fiduciary funds in investment instruments by
26 certain banks or trust companies; creating s. 689.175,
27 F.S.; abolishing the worthier title doctrine; providing
28 construction of certain instrument language; amending s.
29 731.103, F.S.; correcting a cross-reference; providing
30 construction relating to establishment of death by certain
31 evidence under certain circumstances; creating s.
32 731.1035, F.S.; providing for application of rules of
33 evidence in civil actions to certain proceedings; amending
34 s. 731.201, F.S.; revising definitions; conforming terms
35 and correcting cross-references; amending s. 731.303,
36 F.S.; specifying nonapplication of certain orders relating
37 to powers of revocation and powers of appointment;
38 revising provisions relating to representation by a holder
39 of a power of appointment; amending s. 732.513, F.S.;
40 deleting a ground protecting a devise's validity; amending
41 s. 732.603, F.S.; revising provisions relating to
42 antilapse, deceased devisees, and class gifts; amending s.
43 744.331, F.S.; revising provisions relating to orders
44 determining incapacity; amending s. 744.441, F.S.;
45 revising authority of certain guardians to prosecute or
46 defend claims or proceedings for certain purposes;
47 specifying duties of a court; creating s. 744.462, F.S.;
48 providing requirements for judicial determinations
49 relating to alternatives to guardianship; providing duties
50 of a court; amending ss. 497.458, 607.0802, 617.0802,
51 660.46, 660.418, 689.071, 689.075, 709.08, 721.08, 721.53,

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52 | 732.2075, 732.604, 732.611, 733.212, 733.602, 733.805,
53 | 733.817, 738.104, 738.1041, 738.202, 739.102, and 744.361,
54 | F.S., to conform terms and correct cross-references;
55 | repealing ss. 737.101, 737.105, 737.106, 737.111, 737.115,
56 | and 737.116, constituting part I of ch. 737, F.S.,
57 | relating to trust registration; repealing ss. 737.201,
58 | 737.202, 737.203, 737.2035, 737.204, 737.2041, 737.205,
59 | 737.206, 737.2065, 737.207, 737.208, and 737.209,
60 | constituting part II of ch. 737, F.S., relating to
61 | jurisdiction of courts; repealing ss. 737.301, 737.302,
62 | 737.303, 737.3035, 737.304, 737.305, 737.3053, 737.3054,
63 | 737.3055, 737.306, 737.3061, 737.307, 737.308, and
64 | 737.309, constituting part III of ch. 737, F.S., relating
65 | to duties and liabilities of trustees; repealing ss.
66 | 737.401, 737.402, 737.4025, 737.403, 737.4031, 737.4032,
67 | 737.4033, 737.404, 737.405, and 737.406, constituting part
68 | IV of ch. 737, F.S., relating to powers of trustees;
69 | repealing ss. 737.501, 737.502, 737.503, 737.504, 737.505,
70 | 737.506, 737.507, 737.508, 737.509, 737.510, 737.511, and
71 | 737.512, constituting part V of ch. 737, F.S., relating to
72 | charitable trusts; repealing ss. 737.6035, 737.621,
73 | 737.622, 737.623, 737.624, 737.625, 737.626, and 737.627,
74 | consisting of part VI of ch. 737, F.S., relating to rules
75 | of construction of trust administration; providing an
76 | effective date.

77 |
78 | Be It Enacted by the Legislature of the State of Florida:
79 |

80 Section 1. Part I of chapter 736, Florida Statutes,
81 consisting of sections 736.0101, 736.0102, 736.0103, 736.0104,
82 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110,
83 736.0111, and 736.0112, is created to read:

84
85 PART I

86 GENERAL PROVISIONS AND DEFINITIONS

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

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

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

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

110 (2) "Affiliate" means any person or entity that directly
111 or indirectly through one or more intermediaries owns or
112 controls, is owned or controlled by, or is under common control
113 or ownership with, the fiduciary. An affiliate may include, but
114 is not limited to, an investment adviser, administrator, broker,
115 custodian, transfer agent, placement agent, servicing agent,
116 registrar, underwriter, sponsor, distributor, or 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

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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.

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

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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,
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 or 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
328 been appointed trustee, shall not be moved or otherwise affected
329 solely because the trustee engaged in an interstate merger

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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.

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

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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
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

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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:

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PART II

445

JUDICIAL PROCEEDINGS

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447 736.0201 Role of court in trust proceedings.--

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

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

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

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

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- (a) Determine the validity of all or part of a trust;
- (b) Appoint or remove a trustee;
- (c) Review trustees' fees;
- (d) Review and settle interim or final accounts;
- (e) Ascertain beneficiaries; determine any question
arising in the administration or distribution of any trust,
including questions of construction of trust instruments;

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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
 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

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

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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.

602 736.0303 Representation by fiduciaries and parents.--To
603 the extent there is no conflict of interest between the

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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
630 representation might be inadequate, the court may appoint a
631 representative to receive notice, give consent, and otherwise

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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)1. 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 2. This paragraph 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 3. This paragraph applies to trusts created on or after
730 the effective date of this code. Section 737.111, as in effect
731 prior to the effective date of this code, continues to apply to
732 trusts 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.--

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.

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:

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.
 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

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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:

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
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.

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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
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

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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.--

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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:

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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.

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.

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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
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 (c) Notwithstanding paragraph (b), the assets of an
1072 irrevocable trust shall not be subject to the claims of an
1073 existing or subsequent creditor or assignee of the settlor, in
1074 whole or in part, solely because of the existence of a

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1075 discretionary power granted to the trustee by the terms of the
 1076 trust or any other provision of law to pay directly to the
 1077 taxing authorities or to reimburse the settlor for any tax on
 1078 trust income or principal that is payable by the settlor under
 1079 the law imposing such tax.

1080 (2) For purposes of this section:

1081 (a) During the period the power may be exercised, the
 1082 holder of a power of withdrawal is treated in the same manner as
 1083 the settlor of a revocable trust to the extent of the property
 1084 subject to the power.

1085 (b) Upon the lapse, release, or waiver of the power, the
 1086 holder is treated as the settlor of the trust only to the extent
 1087 the value of the property affected by the lapse, release, or
 1088 waiver exceeds the greater of the amount specified in:

- 1089 1. Section 2041(b) (2) or s. 2514(e); or
- 1090 2. Section 2503(b),

1091
 1092 of the Internal Revenue Code of 1986, as amended.

1093 736.05053 Trustee's duty to pay expenses and obligations
 1094 of settlor's estate.--

1095 (1) A trustee of a trust described in s. 733.707(3) shall
 1096 pay to the personal representative of a settlor's estate any
 1097 amounts that the personal representative certifies in writing to
 1098 the trustee are required to pay the expenses of the
 1099 administration and obligations of the settlor's estate. Payments
 1100 made by a trustee, unless otherwise provided in the trust
 1101 instrument, must be charged as expenses of the trust without a
 1102 contribution from anyone. The interests of all beneficiaries of

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1103 such a trust are subject to the provisions of this subsection;
1104 however, the payments must be made from assets, property, or the
1105 proceeds of the assets or property, other than assets proscribed
1106 in s. 733.707(3), that are included in the settlor's gross
1107 estate for federal estate tax purposes.

1108 (2) Unless a settlor provides by will, or designates in a
1109 trust described in s. 733.707(3) funds or property passing under
1110 the trust to be used as designated, the expenses of the
1111 administration and obligations of the settlor's estate must be
1112 paid from the trust in the following order:

1113 (a) Property of the residue of the trust remaining after
1114 all distributions that are to be satisfied by reference to a
1115 specific property or type of property, fund, or sum.

1116 (b) Property that is not to be distributed from specified
1117 or identified property or a specified or identified item of
1118 property.

1119 (c) Property that is to be distributed from specified or
1120 identified property or a specified or identified item of
1121 property.

1122 (3) Trust distributions that are to be satisfied from
1123 specified or identified property must be classed as
1124 distributions to be satisfied from the general assets of the
1125 trust and not otherwise disposed of in the trust instrument on
1126 the failure or insufficiency of funds or property from which
1127 payment should be made, to the extent of the insufficiency.
1128 Trust distributions given for valuable consideration abate with
1129 other distributions of the same class only to the extent of the
1130 excess over the value of the consideration until all others of

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1131 the same class are exhausted. Except as provided in this
1132 section, trust distributions abate equally and ratably and
1133 without preference or priority between real and personal
1134 property. When a specified or identified item of property that
1135 has been designated for distribution in the trust instrument or
1136 that is charged with a distribution is sold or taken by the
1137 trustee, other beneficiaries shall contribute according to their
1138 respective interests to the beneficiary whose property has been
1139 sold or taken. Before distribution, the trustee shall determine
1140 the amounts of the respective contributions and such amounts
1141 must be paid or withheld before distribution is made.

1142 (4) The trustee shall pay the expenses of trust
1143 administration, including compensation of trustees and attorneys
1144 of the trustees, before and in preference to the expenses of the
1145 administration and obligations of the settlor's estate.

1146 736.05055 Notice of trust.--

1147 (1) Upon the death of a settlor of a trust described in s.
1148 733.707(3), the trustee must file a notice of trust with the
1149 court of the county of the settlor's domicile and the court
1150 having jurisdiction of the settlor's estate.

1151 (2) The notice of trust must contain the name of the
1152 settlor, the settlor's date of death, the title of the trust, if
1153 any, the date of the trust, and the name and address of the
1154 trustee.

1155 (3) If the settlor's probate proceeding has been
1156 commenced, the clerk shall notify the trustee in writing of the
1157 date of the commencement of the probate proceeding and the file
1158 number.

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1159 (4) The clerk shall file and index the notice of trust in
1160 the same manner as a caveat unless there exists a probate
1161 proceeding for the settlor's estate, in which case the notice of
1162 trust must be filed in the probate proceeding and the clerk
1163 shall send a copy to the personal representative.

1164 (5) The clerk shall send a copy of any caveat filed
1165 regarding the settlor to the trustee, and the notice of trust to
1166 any caveator, unless there is a probate proceeding pending and
1167 the personal representative and the trustee are the same.

1168 (6) Any proceeding affecting the expenses of the
1169 administration or obligations of the settlor's estate prior to
1170 the trustee filing a notice of trust are binding on the trustee.

1171 (7) The trustee's failure to file the notice of trust does
1172 not affect the trustee's obligation to pay expenses of
1173 administration and obligations of the settlor's estate as
1174 provided in s. 733.607(2).

1175 736.0506 Overdue distribution.--

1176 (1) As used in this section, the term "mandatory
1177 distribution" means a distribution of income or principal the
1178 trustee is required to make to a beneficiary under the terms of
1179 the trust, including a distribution on termination of the trust.
1180 The term does not include a distribution subject to the exercise
1181 of the trustee's discretion even if:

1182 (a) The discretion is expressed in the form of a standard
1183 of distribution; or

1184 (b) The terms of the trust authorizing a distribution
1185 couple language of discretion with language of direction.

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1186 (2) A creditor or assignee of a beneficiary may reach a
1187 mandatory distribution of income or principal, including a
1188 distribution upon termination of the trust, if the trustee has
1189 not made the distribution to the beneficiary within a reasonable
1190 time after the designated distribution date, whether or not a
1191 trust contains a spendthrift provision.

1192 736.0507 Personal obligations of trustee.--Except to the
1193 extent of the trustee's interest in the trust other than as a
1194 trustee, trust property is not subject to personal obligations
1195 of the trustee, even if the trustee becomes insolvent or
1196 bankrupt.

1197 Section 6. Part VI of chapter 736, Florida Statutes,
1198 consisting of sections 736.0601, 736.0602, 736.0603, and
1199 736.0604, is created to read:

1200

1201 PART VI1202 REVOCABLE TRUSTS

1203

1204 736.0601 Capacity of settlor of revocable trust.--The
1205 capacity required to create, amend, revoke, or add property to a
1206 revocable trust, or to direct the actions of the trustee of a
1207 revocable trust, is the same as that required to make a will.

1208 736.0602 Revocation or amendment of revocable trust.--

1209 (1) Unless the terms of a trust expressly provide that the
1210 trust is irrevocable, the settlor may revoke or amend the trust.
1211 This subsection does not apply to a trust created under an
1212 instrument executed before the effective date of this code.

1213 (2) If a revocable trust is created or funded by more than
 1214 one settlor:

1215 (a) To the extent the trust consists of community
 1216 property, the trust may be revoked by either spouse acting alone
 1217 but may be amended only by joint action of both spouses.

1218 (b) To the extent the trust consists of property other
 1219 than community property, each settlor may revoke or amend the
 1220 trust with regard to the portion of the trust property
 1221 attributable to that settlor's contribution.

1222 (c) Upon the revocation or amendment of the trust by fewer
 1223 than all of the settlors, the trustee shall promptly notify the
 1224 other settlors of the revocation or amendment.

1225 (3) Subject to s. 736.0403(2), the settlor may revoke or
 1226 amend a revocable trust:

1227 (a) By substantial compliance with a method provided in
 1228 the terms of the trust; or

1229 (b) If the terms of the trust do not provide a method, by:

1230 1. A later will or codicil that expressly refers to the
 1231 trust or specifically devises property that would otherwise have
 1232 passed according to the terms of the trust; or

1233 2. Any other method manifesting clear and convincing
 1234 evidence of the settlor's intent.

1235 (4) Upon revocation of a revocable trust, the trustee
 1236 shall deliver the trust property as the settlor directs.

1237 (5) A settlor's powers with respect to revocation,
 1238 amendment, or distribution of trust property may be exercised by
 1239 an agent under a power of attorney only as authorized by s.
 1240 709.08.

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1241 (6) A guardian of the property of the settlor may exercise
 1242 a settlor's powers with respect to revocation, amendment, or
 1243 distribution of trust property only as provided in s. 744.441.

1244 (7) A trustee who does not know that a trust has been
 1245 revoked or amended is not liable for distributions made and
 1246 other actions taken on the assumption that the trust had not
 1247 been amended or revoked.

1248 736.0603 Settlor's powers; powers of withdrawal.--

1249 (1) While a trust is revocable, the duties of the trustee
 1250 are owed exclusively to the settlor.

1251 (2) During the period the power may be exercised, the
 1252 holder of a power of withdrawal has the rights of a settlor of a
 1253 revocable trust under this section to the extent of the property
 1254 subject to the power.

1255 736.0604 Limitation on action contesting validity of
 1256 revocable trust.--An action to contest the validity of a trust
 1257 that was revocable at the settlor's death is barred, if not
 1258 commenced within the earlier of:

1259 (1) The time as provided in chapter 95; or

1260 (2) Six months after the trustee sent the person a copy of
 1261 the trust instrument and a notice informing the person of the
 1262 trust's existence, of the trustee's name and address, and of the
 1263 time allowed for commencing a proceeding.

1264 Section 7. Part VII of chapter 736, Florida Statutes,
 1265 consisting of sections 736.0701, 736.0702, 736.0703, 736.0704,
 1266 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is created
 1267 to read:

1268

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.--

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1296 (1) A trustee shall give bond to secure performance of the
1297 trustee's duties only if the court finds that a bond is needed
1298 to protect the interests of the beneficiaries or is required by
1299 the terms of the trust and the court has not dispensed with the
1300 requirement.

1301 (2) The court may specify the amount of a bond, the
1302 trustee's liabilities under the bond, and whether sureties are
1303 necessary. The court may modify or terminate a bond at any time.

1304 736.0703 Cotrustees.--

1305 (1) Cotrustees who are unable to reach a unanimous
1306 decision may act by majority decision.

1307 (2) If a vacancy occurs in a cotrusteeship, the remaining
1308 cotrustees or a majority of the remaining cotrustees may act for
1309 the trust.

1310 (3) A cotrustee must participate in the performance of a
1311 trustee's function unless the cotrustee is unavailable to
1312 perform the function because of absence, illness,
1313 disqualification under other provision of law, or other
1314 temporary incapacity or the cotrustee has properly delegated the
1315 performance of the function to another cotrustee.

1316 (4) If a cotrustee is unavailable to perform duties
1317 because of absence, illness, disqualification under other law,
1318 or other temporary incapacity, and prompt action is necessary to
1319 achieve the purposes of the trust or to avoid injury to the
1320 trust property, the remaining cotrustee or a majority of the
1321 remaining cotrustees may act for the trust.

1322 (5) A cotrustee may not delegate to another cotrustee the
1323 performance of a function the settlor reasonably expected the

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1324 cotrustees to perform jointly. A cotrustee may revoke a
1325 delegation previously made.

1326 (6) Except as otherwise provided in subsection (7), a
1327 cotrustee who does not join in an action of another cotrustee is
1328 not liable for the action.

1329 (7) Each cotrustee shall exercise reasonable care to:

1330 (a) Prevent a cotrustee from committing a breach of trust.

1331 (b) Compel a cotrustee to redress a breach of trust.

1332 (8) A dissenting cotrustee who joins in an action at the
1333 direction of the majority of the cotrustees and who notifies any
1334 cotrustee of the dissent at or before the time of the action is
1335 not liable for the action.

1336 736.0704 Vacancy in trusteeship; appointment of
1337 successor.--

1338 (1) A vacancy in a trusteeship occurs if:

1339 (a) A person designated as trustee declines the
1340 trusteeship;

1341 (b) A person designated as trustee cannot be identified or
1342 does not exist;

1343 (c) A trustee resigns;

1344 (d) A trustee is disqualified or removed;

1345 (e) A trustee dies; or

1346 (f) A trustee is adjudicated to be incapacitated.

1347 (2) If one or more cotrustees remain in office, a vacancy
1348 in a trusteeship need not be filled. A vacancy in a trusteeship
1349 must be filled if the trust has no remaining trustee.

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1350 (3) A vacancy in a trusteeship of a noncharitable trust
 1351 that is required to be filled must be filled in the following
 1352 order of priority:

1353 (a) By a person named or designated pursuant to the terms
 1354 of the trust to act as successor trustee.

1355 (b) By a person appointed by unanimous agreement of the
 1356 qualified beneficiaries.

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

1358 (4) A vacancy in a trusteeship of a charitable trust that
 1359 is required to be filled must be filled in the following order
 1360 of priority:

1361 (a) By a person named or designated pursuant to the terms
 1362 of the trust to act as successor trustee.

1363 (b) By a person selected by unanimous agreement of the
 1364 charitable organizations expressly designated to receive
 1365 distributions under the terms of the trust.

1366 (c) By a person appointed by the court.

1367 (5) The court may appoint an additional trustee or special
 1368 fiduciary whenever the court considers the appointment necessary
 1369 for the administration of the trust, whether or not a vacancy in
 1370 a trusteeship exists or is required to be filled.

1371 736.0705 Resignation of trustee.--

1372 (1) A trustee may resign:

1373 (a) Upon at least 30 days' notice to the qualified
 1374 beneficiaries, the settlor, if living, and all cotrustees; or

1375 (b) With the approval of the court.

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1376 (2) In approving a resignation, the court may issue orders
1377 and impose conditions reasonably necessary for the protection of
1378 the trust property.

1379 (3) Any liability of a resigning trustee or of any
1380 sureties on the trustee's bond for acts or omissions of the
1381 trustee is not discharged or affected by the trustee's
1382 resignation.

1383 736.0706 Removal of trustee.--

1384 (1) The settlor, a cotrustee, or a beneficiary may request
1385 the court to remove a trustee or a trustee may be removed by the
1386 court on the court's own initiative.

1387 (2) The court may remove a trustee if:

1388 (a) The trustee has committed a serious breach of trust;

1389 (b) The lack of cooperation among cotrustees substantially
1390 impairs the administration of the trust;

1391 (c) Due to the unfitness, unwillingness, or persistent
1392 failure of the trustee to administer the trust effectively, the
1393 court determines that removal of the trustee best serves the
1394 interests of the beneficiaries; or

1395 (d) There has been a substantial change of circumstances
1396 or removal is requested by all of the qualified beneficiaries,
1397 the court finds that removal of the trustee best serves the
1398 interests of all of the beneficiaries and is not inconsistent
1399 with a material purpose of the trust, and a suitable cotrustee
1400 or successor trustee is available.

1401 (3) Pending a final decision on a request to remove a
1402 trustee, or in lieu of or in addition to removing a trustee, the
1403 court may order such appropriate relief under s. 736.1001(2) as

1404 may be necessary to protect the trust property or the interests
 1405 of the beneficiaries.

1406 736.0707 Delivery of property by former trustee.--

1407 (1) Unless a cotrustee remains in office or the court
 1408 otherwise orders and until the trust property is delivered to a
 1409 successor trustee or other person entitled to the property, a
 1410 trustee who has resigned or been removed has the duties of a
 1411 trustee and the powers necessary to protect the trust property.

1412 (2) A trustee who has resigned or been removed shall
 1413 within a reasonable time deliver the trust property within the
 1414 trustee's possession to the cotrustee, successor trustee, or
 1415 other person entitled to the property, subject to the right of
 1416 the trustee to retain a reasonable reserve for the payment of
 1417 debts, expenses, and taxes. The provisions of this subsection
 1418 are in addition to and are not in derogation of the rights of a
 1419 removed or resigning trustee under the common law.

1420 736.0708 Compensation of trustee.--

1421 (1) If the terms of a trust do not specify the trustee's
 1422 compensation, a trustee is entitled to compensation that is
 1423 reasonable under the circumstances.

1424 (2) If the terms of a trust specify the trustee's
 1425 compensation, the trustee is entitled to be compensated as
 1426 specified but the court may allow more or less compensation if:

1427 (a) The duties of the trustee are substantially different
 1428 from those contemplated when the trust was created; or

1429 (b) The compensation specified by the terms of the trust
 1430 would be unreasonably low or high.

1431 (3) If the trustee has rendered other services in
1432 connection with the administration of the trust, the trustee
1433 shall also be allowed reasonable compensation for the other
1434 services rendered in addition to reasonable compensation as
1435 trustee.

1436 736.0709 Reimbursement of expenses.--

1437 (1) A trustee is entitled to be reimbursed out of the
1438 trust property, with interest as appropriate, for reasonable
1439 expenses that were properly incurred in the administration of
1440 the trust.

1441 (2) An advance by the trustee of money for the protection
1442 of the trust gives rise to a lien against trust property to
1443 secure reimbursement with reasonable interest.

1444 Section 8. Part VIII of chapter 736, Florida Statutes,
1445 consisting of sections 736.0801, 736.0802, 736.0803, 736.0804,
1446 736.0805, 736.0806, 736.0807, 736.0808, 736.0809, 736.0810,
1447 736.08105, 736.0811, 736.0812, 736.08125, 736.0813, 736.08135,
1448 736.0814, 736.08147, 736.0815, 736.0816, 736.08163, 736.08165,
1449 and 736.0817, is created to read:

1450

1451 PART VIII

1452 DUTIES AND POWERS OF TRUSTEE

1453

1454 736.0801 Duty to administer trust.--Upon acceptance of a
1455 trusteeship, the trustee shall administer the trust in good
1456 faith, in accordance with its terms and purposes and the
1457 interests of the beneficiaries, and in accordance with this
1458 code.

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1459 | 736.0802 Duty of loyalty.--

1460 | (1) As between a trustee and the beneficiaries, a trustee
1461 | shall administer the trust solely in the interests of the
1462 | beneficiaries.

1463 | (2) Subject to the rights of persons dealing with or
1464 | assisting the trustee as provided in s. 736.1016, a sale,
1465 | encumbrance, or other transaction involving the investment or
1466 | management of trust property entered into by the trustee for the
1467 | trustee's own personal account or which is otherwise affected by
1468 | a conflict between the trustee's fiduciary and personal
1469 | interests is voidable by a beneficiary affected by the
1470 | transaction unless:

1471 | (a) The transaction was authorized by the terms of the
1472 | trust;

1473 | (b) The transaction was approved by the court;

1474 | (c) The beneficiary did not commence a judicial proceeding
1475 | within the time allowed by s. 736.1008;

1476 | (d) The beneficiary consented to the trustee's conduct,
1477 | ratified the transaction, or released the trustee in compliance
1478 | with s. 736.1012;

1479 | (e) The transaction involves a contract entered into or
1480 | claim acquired by the trustee when that person had not become or
1481 | contemplated becoming trustee; or

1482 | (f) The transaction was consented to in writing by a
1483 | settlor of the trust while the trust was revocable.

1484 | (3) A sale, encumbrance, or other transaction involving
1485 | the investment or management of trust property is presumed to be
1486 | affected by a conflict between personal and fiduciary interests

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

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1487 if the sale, encumbrance, or other transaction is entered into
1488 by the trustee with:

1489 (a) The trustee's spouse;

1490 (b) The trustee's descendants, siblings, parents, or their
1491 spouses;

1492 (c) An officer, director, employee, agent, or attorney of
1493 the trustee; or

1494 (d) A corporation or other person or enterprise in which
1495 the trustee, or a person that owns a significant interest in the
1496 trustee, has an interest that might affect the trustee's best
1497 judgment.

1498 (4) A transaction not concerning trust property in which
1499 the trustee engages in the trustee's individual capacity
1500 involves a conflict between personal and fiduciary interests if
1501 the transaction concerns an opportunity properly belonging to
1502 the trust.

1503 (5) (a) An investment by a trustee authorized by lawful
1504 authority to engage in trust business, as defined in s.
1505 658.12(20), in investment instruments, as defined in s.
1506 660.25(6), that are owned or controlled by the trustee or its
1507 affiliate, or from which the trustee or its affiliate receives
1508 compensation for providing services in a capacity other than as
1509 trustee, is not presumed to be affected by a conflict between
1510 personal and fiduciary interests provided the investment
1511 otherwise complies with chapters 518 and 660 and the trustee
1512 complies with the disclosure requirements of this subsection.

1513 (b) A trustee who invests trust funds in investment
1514 instruments that are owned or controlled by the trustee or its

1515 affiliate shall disclose the following to all qualified
 1516 beneficiaries:

1517 1. Notice that the trustee has invested trust funds in
 1518 investment instruments owned or controlled by the trustee or its
 1519 affiliate.

1520 2. The identity of the investment instruments.

1521 3. The identity and relationship to the trustee of any
 1522 affiliate that owns or controls the investment instruments.

1523 (c) A trustee who invests trust funds in investment
 1524 instruments with respect to which the trustee or its affiliate
 1525 receives compensation for providing services in a capacity other
 1526 than as trustee shall disclose to all qualified beneficiaries
 1527 the nature of the services provided by the trustee or its
 1528 affiliate and all compensation, including, but not limited to,
 1529 fees or commissions, paid or to be paid by the account and
 1530 received or to be received by an affiliate arising from such
 1531 affiliated investment.

1532 (d) Disclosure required by this subsection shall be made
 1533 at least annually unless there has been no change in the method
 1534 or increase in the rate at which such compensation is calculated
 1535 since the most recent disclosure. The disclosure may be given in
 1536 a trust disclosure document as defined in s. 736.1008, in a copy
 1537 of the prospectus for the investment instrument, in any other
 1538 written disclosure prepared for the investment instrument under
 1539 applicable federal or state law, or in a written summary that
 1540 includes all compensation received or to be received by the
 1541 trustee and any affiliate of the trustee and an explanation of

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1542 the manner in which such compensation is calculated, either as a
1543 percentage of the assets invested or by some other method.

1544 (e) This subsection shall apply as follows:

1545 1. This subsection does not apply to qualified investment
1546 instruments or to a trust for which a right of revocation
1547 exists.

1548 2. For investment instruments other than qualified
1549 investment instruments, paragraphs (a), (b), (c), and (d) shall
1550 apply to irrevocable trusts created on or after July 1, 2007,
1551 that expressly authorize the trustee, by specific reference to
1552 this subsection, to invest in investment instruments owned or
1553 controlled by the trustee or its affiliate.

1554 3. For investment instruments other than qualified
1555 investment instruments, paragraphs (a), (b), (c), and (d) shall
1556 apply to irrevocable trusts not described in subparagraph 2.
1557 only as follows:

1558 a. Such paragraphs shall not apply until 60 days after the
1559 statement required in paragraph (f) is provided and no objection
1560 is made or any objection which is made has been terminated.

1561 (I) An objection is made if, within 60 days after the date
1562 of the statement required in paragraph (f), a super majority of
1563 the eligible beneficiaries deliver to the trustee written
1564 objections to the application of this subsection to such trust.
1565 An objection shall be deemed to be delivered to the trustee on
1566 the date the objection is mailed to the mailing address listed
1567 in the notice provided in paragraph (f).

1568 (II) An objection is terminated upon the earlier of the
1569 receipt of consent from a super majority of eligible

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1570 beneficiaries of the class that made the objection or the
1571 resolution of the objection pursuant to this subparagraph.

1572 (III) If an objection is delivered to the trustee, the
1573 trustee may petition the court for an order overruling the
1574 objection and authorizing the trustee to make investments under
1575 this subsection. The burden shall be on the trustee to show good
1576 cause for the relief sought.

1577 (IV) Any qualified beneficiary may petition the court for
1578 an order to prohibit, limit, or restrict a trustee's authority
1579 to make investments under this subsection. The burden shall be
1580 upon the petitioning beneficiary to show good cause for the
1581 relief sought.

1582 (V) The court may award costs and attorney's fees relating
1583 to any petition under this subparagraph in the same manner as in
1584 chancery actions. When costs and attorney's fees are to be paid
1585 out of the trust, the court, in its discretion, may direct from
1586 which part of the trust such costs and fees shall be paid.

1587 b. The objection of a super majority of eligible
1588 beneficiaries under this subparagraph may thereafter be removed
1589 by the written consent of a super majority of the class or
1590 classes of those eligible beneficiaries that made the objection.

1591 (f)1. Any time prior to initially investing in any
1592 investment instrument described in this subsection other than a
1593 qualified investment instrument, the trustee of a trust
1594 described in subparagraph (e)3. shall provide to all qualified
1595 beneficiaries a statement containing the following:

1596 a. The name, telephone number, street address, and mailing
1597 address of the trustee and of any individuals who may be
1598 contacted for further information.

1599 b. A statement that, unless a super majority of the
1600 eligible beneficiaries objects to the application of this
1601 subsection to the trust within 60 days after the date the
1602 statement pursuant to this subsection was delivered, this
1603 subsection shall apply to the trust.

1604 c. A statement that, if this subsection applies to the
1605 trust, the trustee will have the right to make investments in
1606 investment instruments, as defined in s. 660.25(6), that are
1607 owned or controlled by the trustee or its affiliate, or from
1608 which the trustee or its affiliate receives compensation for
1609 providing services in a capacity other than as trustee, and that
1610 the trustee or its affiliate may receive fees in addition to the
1611 trustee's compensation for administering the trust.

1612
1613 A statement by the trustee is not delivered if the statement is
1614 accompanied by another written communication other than a
1615 written communication by the trustee that refers only to the
1616 statement.

1617 2. For purposes of paragraph (e) and this paragraph:

1618 a. "Eligible beneficiaries" means:

1619 (I) If at the time the determination is made there are one
1620 or more beneficiaries as described in s. 736.0103(14)(c), the
1621 beneficiaries described in s. 736.0103(14)(a) and (c); or

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1622 (II) If there is no beneficiary described in s.
1623 736.0103(14)(c), the beneficiaries described in s.
1624 736.0103(14)(a) and (b).

1625 b. "Super majority of the eligible beneficiaries" means:
1626 (I) If at the time the determination is made there are one
1627 or more beneficiaries as described in s. 736.0103(14)(c), at
1628 least two-thirds in interest of the beneficiaries described in
1629 s. 736.0103(14)(a) or two-thirds in interest of the
1630 beneficiaries described in s. 736.0103(14)(c), if the interests
1631 of the beneficiaries are reasonably ascertainable; otherwise,
1632 two-thirds in number of either such class; or

1633 (II) If there is no beneficiary as described in s.
1634 736.0103(14)(c), at least two-thirds in interest of the
1635 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
1636 interest of the beneficiaries described in s. 736.0103(14)(b),
1637 if the interests of the beneficiaries are reasonably
1638 ascertainable; otherwise, two-thirds in number of either such
1639 class.

1640 c. "Qualified investment instrument" means a mutual fund,
1641 common trust fund, or money market fund described in and
1642 governed by s. 736.0816(3).

1643 d. An irrevocable trust is created upon execution of the
1644 trust instrument. If a trust that was revocable when created
1645 thereafter becomes irrevocable, the irrevocable trust is created
1646 when the right of revocation terminates.

1647 (g) Nothing in this chapter is intended to create or imply
1648 a duty for the trustee to seek the application of this
1649 subsection to invest in investment instruments described in

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

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1650 paragraph (a), and no inference of impropriety shall be made as
1651 a result of a trustee electing not to invest trust assets in
1652 investment instruments described in paragraph (a).

1653 (6) In voting shares of stock or in exercising powers of
1654 control over similar interests in other forms of enterprise, the
1655 trustee shall act in the best interests of the beneficiaries. If
1656 the trust is the sole owner of a corporation or other form of
1657 enterprise, the trustee shall elect or appoint directors or
1658 other managers who will manage the corporation or enterprise in
1659 the best interests of the beneficiaries.

1660 (7) This section does not preclude the following
1661 transactions, if fair to the beneficiaries:

1662 (a) An agreement between a trustee and a beneficiary
1663 relating to the appointment or compensation of the trustee;

1664 (b) A payment of reasonable compensation to the trustee;

1665 (c) A transaction between a trust and another trust, the
1666 decedent's estate, or a guardian of the property of which the
1667 trustee is a fiduciary or in which a beneficiary has an
1668 interest;

1669 (d) A deposit of trust money in a regulated financial-
1670 service institution operated by the trustee; or

1671 (e) An advance by the trustee of money for the protection
1672 of the trust.

1673 (8) This section does not preclude the employment of
1674 persons, including, but not limited to, attorneys, accountants,
1675 investment advisers, or agents, even if they are the trustee, an
1676 affiliate of the trustee, or otherwise associated with the
1677 trustee, to advise or assist the trustee in the exercise of any

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1678 of the trustee's powers and to pay reasonable compensation and
1679 costs incurred in connection with such employment from the
1680 assets of the trust; to act without independent investigation on
1681 their recommendations; and, instead of acting personally, to
1682 employ one or more agents to perform any act of administration,
1683 whether or not discretionary.

1684 (9) The court may appoint a special fiduciary to act with
1685 respect to any proposed transaction that might violate this
1686 section if entered into by the trustee.

1687 (10) Payment of costs or attorney's fees incurred in any
1688 trust proceeding from the assets of the trust may be made by the
1689 trustee without the approval of any person and without court
1690 authorization, except that court authorization shall be required
1691 if an action has been filed or defense asserted against the
1692 trustee based upon a breach of trust. Court authorization is not
1693 required if the action or defense is later withdrawn or
1694 dismissed by the party that is alleging a breach of trust or
1695 resolved without a determination by the court that the trustee
1696 has committed a breach of trust.

1697 736.0803 Impartiality.--If a trust has two or more
1698 beneficiaries, the trustee shall act impartially in
1699 administering the trust property, giving due regard to the
1700 beneficiaries' respective interests.

1701 736.0804 Prudent administration.--A trustee shall
1702 administer the trust as a prudent person would, by considering
1703 the purposes, terms, distribution requirements, and other
1704 circumstances of the trust. In satisfying this standard, the
1705 trustee shall exercise reasonable care, skill, and caution.

1706 736.0805 Expenses of administration.--In administering a
 1707 trust, the trustee shall only incur expenses that are reasonable
 1708 in relation to the trust property, the purposes of the trust,
 1709 and the skills of the trustee.

1710 736.0806 Trustee's skills.--A trustee who has special
 1711 skills or expertise, or is named trustee in reliance on the
 1712 trustee's representation that the trustee has special skills or
 1713 expertise, shall use those special skills or expertise.

1714 736.0807 Delegation by trustee.--

1715 (1) A trustee may delegate duties and powers that a
 1716 prudent trustee of comparable skills could properly delegate
 1717 under the circumstances. The trustee shall exercise reasonable
 1718 care, skill, and caution in:

1719 (a) Selecting an agent.

1720 (b) Establishing the scope and terms of the delegation,
 1721 consistent with the purposes and terms of the trust.

1722 (c) Reviewing the agent's actions periodically, in order
 1723 to monitor the agent's performance and compliance with the terms
 1724 of the delegation.

1725 (2) In performing a delegated function, an agent owes a
 1726 duty to the trust to exercise reasonable care to comply with the
 1727 terms of the delegation.

1728 (3) A trustee who complies with subsection (1) is not
 1729 liable to the beneficiaries or to the trust for an action of the
 1730 agent to whom the function was delegated.

1731 (4) By accepting a delegation of powers or duties from the
 1732 trustee of a trust that is subject to the law of this state, an
 1733 agent submits to the jurisdiction of the courts of this state.

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1734 736.0808 Powers to direct.--

1735 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the
1736 trustee may follow a direction of the settlor that is contrary
1737 to the terms of the trust while a trust is revocable.

1738 (2) If the terms of a trust confer on a person other than
1739 the settlor of a revocable trust, the power to direct certain
1740 actions of the trustee, the trustee shall act in accordance with
1741 an exercise of the power unless the attempted exercise is
1742 manifestly contrary to the terms of the trust or the trustee
1743 knows the attempted exercise would constitute a serious breach
1744 of a fiduciary duty that the person holding the power owes to
1745 the beneficiaries of the trust.

1746 (3) The terms of a trust may confer on a trustee or other
1747 person a power to direct the modification or termination of the
1748 trust.

1749 (4) A person, other than a beneficiary, who holds a power
1750 to direct is presumptively a fiduciary who, as such, is required
1751 to act in good faith with regard to the purposes of the trust
1752 and the interests of the beneficiaries. The holder of a power to
1753 direct is liable for any loss that results from breach of a
1754 fiduciary duty.

1755 736.0809 Control and protection of trust property.--A
1756 trustee shall take reasonable steps to take control of and
1757 protect the trust property.

1758 736.0810 Recordkeeping and identification of trust
1759 property.--

1760 (1) A trustee shall keep clear, distinct, and accurate
1761 records of the administration of the trust.

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1762 (2) A trustee shall keep trust property separate from the
1763 trustee's own property.

1764 (3) Except as otherwise provided in subsection (4), a
1765 trustee shall cause the trust property to be designated so that
1766 the interest of the trust, to the extent feasible, appears in
1767 records maintained by a party other than a trustee or
1768 beneficiary.

1769 (4) If the trustee maintains records clearly indicating
1770 the respective interests, a trustee may invest as a whole the
1771 property of two or more separate trusts.

1772 736.08105 Duty to ascertain marketable title of trust real
1773 property.--A trustee holding title to real property received
1774 from a settlor or estate shall not be required to obtain title
1775 insurance or proof of marketable title until a marketable title
1776 is required for a sale or conveyance of the real property.

1777 736.0811 Enforcement and defense of claims.--A trustee
1778 shall take reasonable steps to enforce claims of the trust and
1779 to defend claims against the trust.

1780 736.0812 Collecting trust property.--A trustee shall take
1781 reasonable steps to compel a former trustee or other person to
1782 deliver trust property to the trustee and, except as provided in
1783 s. 736.08125, to redress a breach of trust known to the trustee
1784 to have been committed by a former trustee.

1785 736.08125 Protection of successor trustees.--

1786 (1) A successor trustee is not personally liable for
1787 actions taken by any prior trustee, nor does any successor
1788 trustee have a duty to institute any proceeding against any
1789 prior trustee, or file any claim against any prior trustee's

1790 estate, for any of the prior trustee's actions as trustee under
 1791 any of the following circumstances:

1792 (a) As to a successor trustee who succeeds a trustee who
 1793 was also the settlor of a trust that was revocable during the
 1794 time that the settlor served as trustee;

1795 (b) As to any beneficiary who has waived any accounting
 1796 required by s. 736.0813, but only as to the periods included in
 1797 the waiver;

1798 (c) As to any beneficiary who has released the successor
 1799 trustee from the duty to institute any proceeding or file any
 1800 claim;

1801 (d) As to any person who is not an eligible beneficiary;
 1802 or

1803 (e) As to any eligible beneficiary:

1804 1. If a supermajority of the eligible beneficiaries have
 1805 released the successor trustee;

1806 2. If the eligible beneficiary has not delivered a written
 1807 request to the successor trustee to institute an action or file
 1808 a claim against the prior trustee within 6 months after the date
 1809 of the successor trustee's acceptance of the trust, if the
 1810 successor trustee has notified the eligible beneficiary in
 1811 writing of acceptance by the successor trustee in accordance
 1812 with 736.0813(1)(a) and that writing advises the beneficiary
 1813 that, unless the beneficiary delivers the written request within
 1814 6 months after the date of acceptance, the right to proceed
 1815 against the successor trustee will be barred pursuant to this
 1816 section; or

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1817 3. For any action or claim that the eligible beneficiary
1818 is barred from bringing against the prior trustee.

1819 (2) For the purposes of this section, the term:

1820 (a) "Eligible beneficiaries" means:

1821 1. At the time the determination is made, if there are one
1822 or more beneficiaries as described in s. 736.0103(14)(c), the
1823 beneficiaries described in s. 736.0103(14)(a) and (c); or

1824 2. If there is no beneficiary as described in s.
1825 736.0103(14)(c), the beneficiaries described in s.
1826 736.0103(14)(a) and (b).

1827 (b) "Supermajority of eligible beneficiaries" means at
1828 least two-thirds in interest of the eligible beneficiaries if
1829 the interests of the eligible beneficiaries are reasonably
1830 ascertainable, otherwise, at least two-thirds in number of the
1831 eligible beneficiaries.

1832 (3) Nothing in this section affects any liability of the
1833 prior trustee or the right of the successor trustee or any
1834 beneficiary to pursue an action or claim against the prior
1835 trustee.

1836 736.0813 Duty to inform and account.--The trustee shall
1837 keep the qualified beneficiaries of the trust reasonably
1838 informed of the trust and its administration.

1839 (1) The trustee's duty to inform and account includes, but
1840 is not limited to, the following:

1841 (a) Within 60 days after acceptance of the trust, the
1842 trustee shall give notice to the qualified beneficiaries of the
1843 acceptance of the trust and the full name and address of the
1844 trustee.

1845 (b) Within 60 days after the date the trustee acquires
1846 knowledge of the creation of an irrevocable trust, or the date
1847 the trustee acquires knowledge that a formerly revocable trust
1848 has become irrevocable, whether by the death of the settlor or
1849 otherwise, the trustee shall give notice to the qualified
1850 beneficiaries of the trust's existence, the identity of the
1851 settlor or settlors, the right to request a copy of the trust
1852 instrument, and the right to accountings under this section.

1853 (c) Upon reasonable request, the trustee shall provide a
1854 qualified beneficiary with a complete copy of the trust
1855 instrument.

1856 (d) A trustee of an irrevocable trust shall provide a
1857 trust accounting, as set forth in s. 736.08135, to each
1858 qualified beneficiary annually and on termination of the trust
1859 or on change of the trustee.

1860 (e) Upon reasonable request, the trustee shall provide a
1861 qualified beneficiary with relevant information about the assets
1862 and liabilities of the trust and the particulars relating to
1863 administration.

1864
1865 Paragraphs (a) and (b) do not apply to an irrevocable trust
1866 created before the effective date of this code, or to a
1867 revocable trust that becomes irrevocable before the effective
1868 date of this code. Paragraph (a) does not apply to a trustee who
1869 accepts a trusteeship before the effective date of this code.

1870 (2) A qualified beneficiary may waive the trustee's duty
1871 to account under paragraph (1) (d). A qualified beneficiary may
1872 withdraw a waiver previously given. Waivers and withdrawals of

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1873 prior waivers under this subsection must be in writing.
1874 Withdrawals of prior waivers are effective only with respect to
1875 accountings for future periods.

1876 (3) The representation provisions of part III apply with
1877 respect to all rights of a qualified beneficiary under this
1878 section.

1879 (4) As provided in s. 736.0603(1), the trustee's duties
1880 under this section extend only to the settlor while a trust is
1881 revocable.

1882 (5) This section applies to trust accountings rendered for
1883 accounting periods beginning on or after January 1, 2008.

1884 736.08135 Trust accountings.--

1885 (1) A trust accounting must be a reasonably understandable
1886 report from the date of the last accounting or, if none, from
1887 the date on which the trustee became accountable, that
1888 adequately discloses the information required in subsection (2).

1889 (2) (a) The accounting must begin with a statement
1890 identifying the trust, the trustee furnishing the accounting,
1891 and the time period covered by the accounting.

1892 (b) The accounting must show all cash and property
1893 transactions and all significant transactions affecting
1894 administration during the accounting period, including
1895 compensation paid to the trustee and the trustee's agents. Gains
1896 and losses realized during the accounting period and all
1897 receipts and disbursements must be shown.

1898 (c) To the extent feasible, the accounting must identify
1899 and value trust assets on hand at the close of the accounting
1900 period. For each asset or class of assets reasonably capable of

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1901 valuation, the accounting shall contain two values, the asset
 1902 acquisition value or carrying value and the estimated current
 1903 value. The accounting must identify each known noncontingent
 1904 liability with an estimated current amount of the liability if
 1905 known.

1906 (d) To the extent feasible, the accounting must show
 1907 significant transactions that do not affect the amount for which
 1908 the trustee is accountable, including name changes in investment
 1909 holdings, adjustments to carrying value, a change of custodial
 1910 institutions, and stock splits.

1911 (e) The accounting must reflect the allocation of
 1912 receipts, disbursements, accruals, or allowances between income
 1913 and principal when the allocation affects the interest of any
 1914 beneficiary of the trust.

1915 (f) The trustee shall include in the final accounting a
 1916 plan of distribution for any undistributed assets shown on the
 1917 final accounting.

1918 (3) This section applies to all trust accountings rendered
 1919 for any accounting periods beginning on or after January 1,
 1920 2003.

1921 736.0814 Discretionary powers; tax savings.--

1922 (1) Notwithstanding the breadth of discretion granted to a
 1923 trustee in the terms of the trust, including the use of such
 1924 terms as "absolute," "sole," or "uncontrolled," the trustee
 1925 shall exercise a discretionary power in good faith and in
 1926 accordance with the terms and purposes of the trust and the
 1927 interests of the beneficiaries. A court shall not determine that
 1928 a trustee abused its discretion merely because the court would

1929 | have exercised the discretion in a different manner or would not
 1930 | have exercised the discretion.

1931 | (2) Subject to subsection (3) and unless the terms of the
 1932 | trust expressly indicate that a rule in this subsection does not
 1933 | apply, a person who is a beneficiary and a trustee may not:

1934 | (a) Make discretionary distributions of either principal
 1935 | or income to or for the benefit of that trustee, except to
 1936 | provide for that trustee's health, education, maintenance, or
 1937 | support as described in ss. 2041 and 2514 of the Internal
 1938 | Revenue Code;

1939 | (b) Make discretionary allocations of receipts or expenses
 1940 | as between principal and income, unless the trustee acts in a
 1941 | fiduciary capacity whereby the trustee has no power to enlarge
 1942 | or shift any beneficial interest except as an incidental
 1943 | consequence of the discharge of the trustee's fiduciary duties;

1944 | (c) Make discretionary distributions of either principal
 1945 | or income to satisfy any of the trustee's legal support
 1946 | obligations; or

1947 | (d) Exercise any other power, including, but not limited
 1948 | to, the right to remove or to replace any trustee, so as to
 1949 | cause the powers enumerated in paragraph (a), paragraph (b), or
 1950 | paragraph (c) to be exercised on behalf of, or for the benefit
 1951 | of, a beneficiary who is also a trustee.

1952 | (3) Subsection (2) does not apply to:

1953 | (a) A power held by the settlor of the trust;

1954 | (b) A power held by the settlor's spouse who is the
 1955 | trustee of a trust for which a marital deduction, as defined in

1956 | s. 2056(a) or s. 2523(a) of the Internal Revenue Code of 1986,
 1957 | as amended, was previously allowed;

1958 | (c) Any trust during any period that the trust may be
 1959 | revoked or amended by its settlor; or

1960 | (d) A trust if contributions to the trust qualify for the
 1961 | annual exclusion under s. 2503(c) of the Internal Revenue Code
 1962 | of 1986, as amended.

1963 | (4) A power whose exercise is limited or prohibited by
 1964 | subsection (2) may be exercised by the remaining trustees whose
 1965 | exercise of the power is not so limited or prohibited. If there
 1966 | is no trustee qualified to exercise the power, on petition by
 1967 | any qualified beneficiary, the court may appoint an independent
 1968 | trustee with authority to exercise the power.

1969 | (5) A person who has the right to remove or to replace a
 1970 | trustee does not possess nor may that person be deemed to
 1971 | possess, by virtue of having that right, the powers of the
 1972 | trustee that is subject to removal or to replacement.

1973 | 736.08147 Duty to distribute trust income.--If a will or
 1974 | trust instrument granting income to the settlor's or testator's
 1975 | spouse for life is silent as to the time of distribution of
 1976 | income and the frequency of distributions, the trustee shall
 1977 | distribute all net income, as defined in chapter 738, to the
 1978 | spouse no less frequently than annually. This provision shall
 1979 | apply to any trust established before, on, or after July 1,
 1980 | 2007, unless the trust instrument expressly directs or permits
 1981 | net income to be distributed less frequently than annually.

1982 | 736.0815 General powers of trustee.--

1983 (1) A trustee, without authorization by the court, may,
 1984 except as limited or restricted by this code, exercise:
 1985 (a) Powers conferred by the terms of the trust.
 1986 (b) Except as limited by the terms of the trust:
 1987 1. All powers over the trust property that an unmarried
 1988 competent owner has over individually owned property.
 1989 2. Any other powers appropriate to achieve the proper
 1990 investment, management, and distribution of the trust property.
 1991 3. Any other powers conferred by this code.
 1992 (2) The exercise of a power is subject to the fiduciary
 1993 duties prescribed by this code.
 1994 736.0816 Specific powers of trustee.--Except as limited or
 1995 restricted by this code, a trustee may:
 1996 (1) Collect trust property and accept or reject additions
 1997 to the trust property from a settlor, including an asset in
 1998 which the trustee is personally interested, and hold property in
 1999 the name of a nominee or in other form without disclosure of the
 2000 trust so that title to the property may pass by delivery but the
 2001 trustee is liable for any act of the nominee in connection with
 2002 the property so held.
 2003 (2) Acquire or sell property, for cash or on credit, at
 2004 public or private sale.
 2005 (3) Acquire an undivided interest in a trust asset,
 2006 including, but not limited to, a money market mutual fund,
 2007 mutual fund, or common trust fund, in which asset the trustee
 2008 holds an undivided interest in any trust capacity, including any
 2009 money market or other mutual fund from which the trustee or any
 2010 affiliate or associate of the trustee is entitled to receive

2011 reasonable compensation for providing necessary services as an
 2012 investment adviser, portfolio manager, or servicing agent. A
 2013 trustee or affiliate or associate of the trustee may receive
 2014 compensation for such services in addition to fees received for
 2015 administering the trust provided such compensation is fully
 2016 disclosed in writing to all qualified beneficiaries.

2017 (4) Exchange, partition, or otherwise change the character
 2018 of trust property.

2019 (5) Deposit trust money in an account in a regulated
 2020 financial-service institution.

2021 (6) Borrow money, with or without security, and mortgage
 2022 or pledge trust property for a period within or extending beyond
 2023 the duration of the trust and advance money for the protection
 2024 of the trust.

2025 (7) With respect to an interest in a proprietorship,
 2026 partnership, limited liability company, business trust,
 2027 corporation, or other form of business or enterprise, continue
 2028 the business or other enterprise and take any action that may be
 2029 taken by shareholders, members, or property owners, including,
 2030 but not limited to, merging, dissolving, or otherwise changing
 2031 the form of business organization or contributing additional
 2032 capital.

2033 (8) With respect to stocks or other securities, exercise
 2034 the rights of an absolute owner, including, but not limited to,
 2035 the right to:

2036 (a) Vote, or give proxies to vote, with or without power
 2037 of substitution, or enter into or continue a voting trust
 2038 agreement.

2039 (b) Hold a security in the name of a nominee or in other
 2040 form without disclosure of the trust so that title may pass by
 2041 delivery.

2042 (c) Pay calls, assessments, and other sums chargeable or
 2043 accruing against the securities, and sell or exercise stock
 2044 subscription or conversion rights.

2045 (d) Deposit the securities with a depository or other
 2046 regulated financial-service institution.

2047 (9) With respect to an interest in real property,
 2048 construct, or make ordinary or extraordinary repairs to,
 2049 alterations to, or improvements in, buildings or other
 2050 structures, demolish improvements, raze existing or erect new
 2051 party walls or buildings, subdivide or develop land, dedicate
 2052 land to public use or grant public or private easements, and
 2053 make or vacate plats and adjust boundaries.

2054 (10) Enter into a lease for any purpose as lessor or
 2055 lessee, including a lease or other arrangement for exploration
 2056 and removal of natural resources, with or without the option to
 2057 purchase or renew, for a period within or extending beyond the
 2058 duration of the trust.

2059 (11) Grant an option involving a sale, lease, or other
 2060 disposition of trust property or acquire an option for the
 2061 acquisition of property, including an option exercisable beyond
 2062 the duration of the trust, and exercise an option so acquired.

2063 (12) Insure the property of the trust against damage or
 2064 loss and insure the trustee, trustee's agents, and beneficiaries
 2065 against liability arising from the administration of the trust.

2066 (13) Abandon or decline to administer property of no value
 2067 or of insufficient value to justify the collection or continued
 2068 administration of such property.

2069 (14) Pay or contest any claim, settle a claim by or
 2070 against the trust, and release, in whole or in part, a claim
 2071 belonging to the trust.

2072 (15) Pay taxes, assessments, compensation of the trustee
 2073 and of employees and agents of the trust, and other expenses
 2074 incurred in the administration of the trust.

2075 (16) Allocate items of income or expense to trust income
 2076 or principal, as provided by law.

2077 (17) Exercise elections with respect to federal, state,
 2078 and local taxes.

2079 (18) Select a mode of payment under any employee benefit
 2080 or retirement plan, annuity, or life insurance payable to the
 2081 trustee, exercise rights under such plan, annuity, or insurance,
 2082 including exercise of the right to indemnification for expenses
 2083 and against liabilities, and take appropriate action to collect
 2084 the proceeds.

2085 (19) Make loans out of trust property, including, but not
 2086 limited to, loans to a beneficiary on terms and conditions that
 2087 are fair and reasonable under the circumstances, and the trustee
 2088 has a lien on future distributions for repayment of those loans.

2089 (20) Employ persons, including, but not limited to,
 2090 attorneys, accountants, investment advisers, or agents, even if
 2091 they are the trustee, an affiliate of the trustee, or otherwise
 2092 associated with the trustee, to advise or assist the trustee in
 2093 the exercise of any of the trustee's powers and pay reasonable

2094 compensation and costs incurred in connection with such
 2095 employment from the assets of the trust and act without
 2096 independent investigation on the recommendations of such
 2097 persons.

2098 (21) Pay an amount distributable to a beneficiary who is
 2099 under a legal disability or who the trustee reasonably believes
 2100 is incapacitated, by paying the amount directly to the
 2101 beneficiary or applying the amount for the beneficiary's
 2102 benefit, or by:

2103 (a) Paying the amount to the beneficiary's guardian of the
 2104 property or, if the beneficiary does not have a guardian of the
 2105 property, the beneficiary's guardian of the person;

2106 (b) Paying the amount to the beneficiary's custodian under
 2107 a Uniform Transfers to Minors Act or custodial trustee under a
 2108 Uniform Custodial Trust Act, and, for that purpose, creating a
 2109 custodianship or custodial trust;

2110 (c) Paying the amount to an adult relative or other person
 2111 having legal or physical care or custody of the beneficiary, to
 2112 be expended on the beneficiary's behalf, if the trustee does not
 2113 know of a guardian of the property, guardian of the person,
 2114 custodian, or custodial trustee; or

2115 (d) Managing the amount as a separate fund on the
 2116 beneficiary's behalf, subject to the beneficiary's continuing
 2117 right to withdraw the distribution.

2118 (22) On distribution of trust property or the division or
 2119 termination of a trust, make distributions in divided or
 2120 undivided interests, allocate particular assets in proportionate

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2121 or disproportionate shares, value the trust property for those
 2122 purposes, and adjust for resulting differences in valuation.

2123 (23) Prosecute or defend, including appeals, an action,
 2124 claim, or judicial proceeding in any jurisdiction to protect
 2125 trust property or the trustee in the performance of the
 2126 trustee's duties.

2127 (24) Sign and deliver contracts and other instruments that
 2128 are useful to achieve or facilitate the exercise of the
 2129 trustee's powers.

2130 (25) On termination of the trust, exercise the powers
 2131 appropriate to wind up the administration of the trust and
 2132 distribute the trust property to the persons entitled to the
 2133 property, subject to the right of the trustee to retain a
 2134 reasonable reserve for the payment of debts, expenses, and
 2135 taxes.

2136 736.08163 Powers of trustees relating to environmental or
 2137 human health laws or to trust property contaminated with
 2138 hazardous or toxic substances; liability.--

2139 (1) From the creation of a trust until final distribution
 2140 of the assets from the trust, the trustee has, without court
 2141 authorization, the powers specified in subsection (2).

2142 (2) Unless otherwise provided in the trust instrument, a
 2143 trustee has the power, acting reasonably, to:

2144 (a) Inspect or investigate, or cause to be inspected or
 2145 investigated, property held by the trustee, including interests
 2146 in sole proprietorships, partnerships, or corporations and any
 2147 assets owned by any such business entity for the purpose of
 2148 determining compliance with an environmental law affecting that

2149 property or to respond to an actual or threatened violation of
2150 an environmental law affecting that property;

2151 (b) Take, on behalf of the trust, any action necessary to
2152 prevent, abate, or otherwise remedy an actual or potential
2153 violation of an environmental law affecting property held by the
2154 trustee, before or after initiation of an enforcement action by
2155 a governmental body;

2156 (c) Refuse to accept property in trust if the trustee
2157 determines that any property to be donated or conveyed to the
2158 trustee is contaminated with a hazardous substance or is being
2159 used or has been used for an activity directly or indirectly
2160 involving a hazardous substance, which circumstance could result
2161 in liability to the trust or trustee or otherwise impair the
2162 value of the assets to be held;

2163 (d) Settle or compromise at any time any claim against the
2164 trust or trustee that may be asserted by a governmental body or
2165 private party that involves the alleged violation of an
2166 environmental law affecting property of any trust over which the
2167 trustee has responsibility;

2168 (e) Disclaim any power granted by any document, law, or
2169 rule of law that, in the sole judgment of the trustee, may cause
2170 the trustee to incur personal liability, or the trust to incur
2171 liability, under any environmental law;

2172 (f) Decline to serve as a trustee, or having undertaken to
2173 serve as a trustee, resign at any time, if the trustee believes
2174 there is or may be a conflict of interest in its fiduciary
2175 capacity and in its individual capacity because of potential
2176 claims or liabilities that may be asserted against the trustee

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2177 on behalf of the trust by reason of the type or condition of the
2178 assets held; or

2179 (g) Charge against the income and principal of the trust
2180 the cost of any inspection, investigation, review, abatement,
2181 response, cleanup, or remedial action that this section
2182 authorizes the trustee to take and, if the trust terminates or
2183 closes or the trust property is transferred to another trustee,
2184 hold assets sufficient to cover the cost of cleaning up any
2185 known environmental problem.

2186 (3) A trustee is not personally liable to any beneficiary
2187 or any other person for a decrease in value of assets in a trust
2188 by reason of the trustee's compliance or efforts to comply with
2189 an environmental law, specifically including any reporting
2190 requirement under that law.

2191 (4) A trustee that acquires ownership or control of a
2192 vessel or other property, without having owned, operated, or
2193 materially participated in the management of that vessel or
2194 property before assuming ownership or control as trustee, is not
2195 considered an owner or operator for purposes of liability under
2196 chapter 376, chapter 403, or any other environmental law. A
2197 trustee that willfully, knowingly, or recklessly causes or
2198 exacerbates a release or threatened release of a hazardous
2199 substance is personally liable for the cost of the response, to
2200 the extent that the release or threatened release is
2201 attributable to the trustee's activities. This subsection does
2202 not preclude the filing of claims against the assets that
2203 constitute the trust held by the trustee or the filing of
2204 actions against the trustee in its representative capacity and

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2205 in any such action, an award or judgment against the trustee
 2206 must be satisfied only from the assets of the trust.

2207 (5) The acceptance by the trustee of the property or a
 2208 failure by the trustee to inspect or investigate the property
 2209 does not create any inference as to whether there is liability
 2210 under an environmental law with respect to that property.

2211 (6) For the purposes of this section, the term "hazardous
 2212 substance" means a substance defined as hazardous or toxic, or
 2213 any contaminant, pollutant, or constituent thereof, or otherwise
 2214 regulated, by an environmental law.

2215 (7) This section does not apply to any trust created under
 2216 a document executed before July 1, 1995, unless the trust is
 2217 amendable and the settlor amends the trust at any time to
 2218 incorporate the provisions of this section.

2219 736.08165 Administration pending outcome of contest or
 2220 other proceeding.--

2221 (1) Pending the outcome of a proceeding filed to determine
 2222 the validity of all or part of a trust or the beneficiaries of
 2223 all or part of a trust, the trustee shall proceed with the
 2224 administration of the trust as if no proceeding had been
 2225 commenced, except no action may be taken and no distribution may
 2226 be made to a beneficiary in contravention of the rights of those
 2227 persons who may be affected by the outcome of the proceeding.

2228 (2) Upon motion of a party and after notice to interested
 2229 persons, a court, on good cause shown, may make an exception to
 2230 the prohibition under subsection (1) and authorize the trustee
 2231 to act or to distribute trust assets to a beneficiary subject to

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2232 any conditions the court, in the court's discretion, may impose,
 2233 including the posting of bond by the beneficiary.

2234 736.0817 Distribution on termination.--Upon the occurrence
 2235 of an event terminating or partially terminating a trust, the
 2236 trustee shall proceed expeditiously to distribute the trust
 2237 property to the persons entitled to the property, subject to the
 2238 right of the trustee to retain a reasonable reserve for the
 2239 payment of debts, expenses, and taxes. The provisions of this
 2240 section are in addition to and are not in derogation of the
 2241 rights of a trustee under the common law with respect to final
 2242 distribution of a trust.

2243 Section 9. Part IX of chapter 736, Florida Statutes,
 2244 consisting of section 736.0901, is created to read:

2245
 2246 PART IX
 2247 TRUST INVESTMENTS

2248
 2249 736.0901 Applicability of chapter 518.--A trustee shall
 2250 invest trust property in accordance with chapter 518.

2251 Section 10. Part X of chapter 736, Florida Statutes,
 2252 consisting of sections 736.1001, 736.1002, 736.1003, 736.1004,
 2253 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010,
 2254 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016,
 2255 736.1017, and 736.1018, is created to read:

2256
 2257 PART X
 2258 LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

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2260 736.1001 Remedies for breach of trust.--
 2261 (1) A violation by a trustee of a duty the trustee owes to
 2262 a beneficiary is a breach of trust.
 2263 (2) To remedy a breach of trust that has occurred or may
 2264 occur, the court may:
 2265 (a) Compel the trustee to perform the trustee's duties;
 2266 (b) Enjoin the trustee from committing a breach of trust;
 2267 (c) Compel the trustee to redress a breach of trust by
 2268 paying money or restoring property or by other means;
 2269 (d) Order a trustee to account;
 2270 (e) Appoint a special fiduciary to take possession of the
 2271 trust property and administer the trust;
 2272 (f) Suspend the trustee;
 2273 (g) Remove the trustee as provided in s. 736.706;
 2274 (h) Reduce or deny compensation to the trustee;
 2275 (i) Subject to s. 736.1016, void an act of the trustee,
 2276 impose a lien or a constructive trust on trust property, or
 2277 trace trust property wrongfully disposed of and recover the
 2278 property or its proceeds; or
 2279 (j) Order any other appropriate relief.
 2280 (3) As an illustration of the remedies available to the
 2281 court and without limiting the court's discretion as provided in
 2282 subsection (2), if a breach of trust results in the favoring of
 2283 any beneficiary to the detriment of any other beneficiary or
 2284 consists of an abuse of the trustee's discretion:
 2285 (a) To the extent the breach of trust has resulted in no
 2286 distribution to a beneficiary or a distribution that is too
 2287 small, the court may require the trustee to pay from the trust

2288 to the beneficiary an amount the court determines will restore
 2289 the beneficiary, in whole or in part, to his or her appropriate
 2290 position.

2291 (b) To the extent the breach of trust has resulted in a
 2292 distribution to a beneficiary that is too large, the court may
 2293 restore the beneficiaries, the trust, or both, in whole or in
 2294 part, to their appropriate positions by requiring the trustee to
 2295 withhold an amount from one or more future distributions to the
 2296 beneficiary who received the distribution that was too large or
 2297 by requiring that beneficiary to return some or all of the
 2298 distribution to the trust.

2299 736.1002 Damages for breach of trust.--

2300 (1) A trustee who commits a breach of trust is liable for
 2301 the greater of:

2302 (a) The amount required to restore the value of the trust
 2303 property and trust distributions to what they would have been if
 2304 the breach had not occurred, including lost income, capital
 2305 gain, or appreciation that would have resulted from proper
 2306 administration; or

2307 (b) The profit the trustee made by reason of the breach.

2308 (2) Except as otherwise provided in this subsection, if
 2309 more than one person, including a trustee or trustees, is liable
 2310 to the beneficiaries for a breach of trust, each liable person
 2311 is entitled to pro rata contribution from the other person or
 2312 persons. A person is not entitled to contribution if the person
 2313 committed the breach of trust in bad faith. A person who
 2314 received a benefit from the breach of trust is not entitled to

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2315 contribution from another person to the extent of the benefit
2316 received.

2317 (3) In determining the pro rata shares of liable persons
2318 in the entire liability for a breach of trust:

2319 (a) Their relative degrees of fault shall be the basis for
2320 allocation of liability.

2321 (b) If equity requires, the collective liability of some
2322 as a group shall constitute a single share.

2323 (c) Principles of equity applicable to contribution
2324 generally shall apply.

2325 (4) The right of contribution shall be enforced as
2326 follows:

2327 (a) Contribution may be enforced by separate action,
2328 whether or not judgment has been entered in an action against
2329 two or more liable persons for the same breach of trust.

2330 (b) When a judgment has been entered in an action against
2331 two or more liable persons for the same breach of trust,
2332 contribution may be enforced in that action by judgment in favor
2333 of one judgment defendant against any other judgment defendants
2334 by motion upon notice to all parties to the action.

2335 (c) If there is a judgment for breach of trust against the
2336 liable person seeking contribution, any separate action by that
2337 person to enforce contribution must be commenced within 1 year
2338 after the judgment has become final by lapse of time for appeal
2339 or after appellate review.

2340 (d) If there is no judgment for the breach of trust
2341 against the liable person seeking contribution, the person's
2342 right of contribution is barred unless the person has:

2343 1. Discharged by payment the common liability within the
 2344 period of the statute of limitations applicable to the
 2345 beneficiary's right of action against the liable person and the
 2346 person has commenced an action for contribution within 1 year
 2347 after payment, or

2348 2. Agreed, while action is pending against the liable
 2349 person, to discharge the common liability and has within 1 year
 2350 after the agreement paid the liability and commenced the
 2351 person's action for contribution.

2352 (5) The beneficiary's recovery of a judgment for breach of
 2353 trust against one liable person does not of itself discharge
 2354 other liable persons from liability for the breach of trust
 2355 unless the judgment is satisfied. The satisfaction of the
 2356 judgment does not impair any right of contribution.

2357 (6) The judgment of the court in determining the liability
 2358 of several defendants to the beneficiary for breach of trust is
 2359 binding upon such defendants in determining the right of such
 2360 defendants to contribution.

2361 (7) Subsection (2) applies to all causes of action for
 2362 breach of trust pending on July 1, 2007, under which causes of
 2363 action the right of contribution among persons jointly and
 2364 severally liable is involved and to all causes of action filed
 2365 after July 1, 2007.

2366 736.1003 Damages in absence of breach.--Absent a breach of
 2367 trust, a trustee is not liable to a beneficiary for a loss or
 2368 depreciation in the value of trust property or for not having
 2369 made a profit.

2370 736.1004 Attorney's fees and costs.--

2371 (1) (a) In all actions for breach of fiduciary duty or
 2372 challenging the exercise of, or failure to exercise, a trustee's
 2373 powers; and

2374 (b) In proceedings arising under ss. 736.0410-736.0417,
 2375
 2376 the court shall award taxable costs as in chancery actions,
 2377 including attorney fees and guardian ad litem fees.

2378 (2) When awarding taxable costs under this section,
 2379 including attorney fees and guardian ad litem fees, the court,
 2380 in its discretion, may direct payment from a party's interest,
 2381 if any, in the trust or enter a judgment that may be satisfied
 2382 from other property of the party, or both.

2383 736.1005 Attorney's fees for services to the trust.--

2384 (1) Any attorney who has rendered services to a trust may
 2385 be awarded reasonable compensation from the trust. The attorney
 2386 may apply to the court for an order awarding attorney's fees
 2387 and, after notice and service on the trustee and all
 2388 beneficiaries entitled to an accounting under s. 736.0813, the
 2389 court shall enter an order on the fee application.

2390 (2) Whenever attorney's fees are to be paid out of the
 2391 trust, the court, in its discretion, may direct from what part
 2392 of the trust the fees shall be paid.

2393 (3) Except when a trustee's interest may be adverse in a
 2394 particular matter, the attorney shall give reasonable notice in
 2395 writing to the trustee of the attorney's retention by an
 2396 interested person and the attorney's entitlement to fees
 2397 pursuant to this section. A court may reduce any fee award for
 2398 services rendered by the attorney prior to the date of actual

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2399 | notice to the trustee, if the actual notice date is later than a
2400 | date of reasonable notice. In exercising this discretion, the
2401 | court may exclude compensation for services rendered after the
2402 | reasonable notice date but prior to the date of actual notice.

2403 | 736.1006 Costs in trust proceedings.--

2404 | (1) In all trust proceedings, costs may be awarded as in
2405 | chancery actions.

2406 | (2) Whenever costs are to be paid out of the trust, the
2407 | court, in its discretion, may direct from what part of the trust
2408 | the costs shall be paid.

2409 | 736.1007 Trustee's attorney's fees.--

2410 | (1) If the trustee of a revocable trust retains an
2411 | attorney to render legal services in connection with the initial
2412 | administration of the trust, the attorney is entitled to
2413 | reasonable compensation for those legal services, payable from
2414 | the assets of the trust without court order. The trustee and the
2415 | attorney may agree to compensation that is determined in a
2416 | manner or amount other than the manner or amount provided in
2417 | this section. The agreement is not binding on a person who bears
2418 | the impact of the compensation unless that person is a party to
2419 | or otherwise consents to be bound by the agreement. The
2420 | agreement may provide that the trustee is not individually
2421 | liable for the attorney's fees and costs.

2422 | (2) Unless otherwise agreed, compensation based on the
2423 | value of the trust assets immediately following the settlor's
2424 | death and the income earned by the trust during initial
2425 | administration at the rate of 75 percent of the schedule
2426 | provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable

2427 total compensation for ordinary services of all attorneys
2428 employed generally to advise a trustee concerning the trustee's
2429 duties in initial trust administration.

2430 (3) An attorney who is retained to render only limited and
2431 specifically defined legal services shall be compensated as
2432 provided in the retaining agreement. If the amount or method of
2433 determining compensation is not provided in the agreement, the
2434 attorney is entitled to a reasonable fee, taking into account
2435 the factors set forth in subsection (6).

2436 (4) Ordinary services of the attorney in an initial trust
2437 administration include legal advice and representation
2438 concerning the trustee's duties relating to:

2439 (a) Review of the trust instrument and each amendment for
2440 legal sufficiency and interpretation.

2441 (b) Implementation of substitution of the successor
2442 trustee.

2443 (c) Persons who must or should be served with required
2444 notices and the method and timing of such service.

2445 (d) The obligation of a successor to require a former
2446 trustee to provide an accounting.

2447 (e) The trustee's duty to protect, insure, and manage
2448 trust assets and the trustee's liability relating to these
2449 duties.

2450 (f) The trustee's duty regarding investments imposed by
2451 the prudent investor rule.

2452 (g) The trustee's obligation to inform and account to
2453 beneficiaries and the method of satisfaction of such
2454 obligations, the liability of the trust and trustee to the

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2455 settlor's creditors, and the advisability or necessity for
2456 probate proceedings to bar creditors.

2457 (h) Contributions due to the personal representative of
2458 the settlor's estate for payment of expenses of administration
2459 and obligations of the settlor's estate.

2460 (i) Identifying tax returns required to be filed by the
2461 trustee, the trustee's liability for payment of taxes, and the
2462 due date of returns.

2463 (j) Filing a nontaxable affidavit, if not filed by a
2464 personal representative.

2465 (k) Order of payment of expenses of administration of the
2466 trust and order and priority of abatement of trust
2467 distributions.

2468 (l) Distribution of income or principal to beneficiaries
2469 or funding of further trusts provided in the governing
2470 instrument.

2471 (m) Preparation of any legal documents required to effect
2472 distribution.

2473 (n) Fiduciary duties, avoidance of self-dealing, conflicts
2474 of interest, duty of impartiality, and obligations to
2475 beneficiaries.

2476 (o) If there is a conflict of interest between a trustee
2477 who is a beneficiary and other beneficiaries of the trust,
2478 advice to the trustee on limitations of certain authority of the
2479 trustee regarding discretionary distributions or exercise of
2480 certain powers and alternatives for appointment of an
2481 independent trustee and appropriate procedures.

2482 (p) Procedures for the trustee's discharge from liability
 2483 for administration of the trust on termination or resignation.

2484 (5) In addition to the attorney's fees for ordinary
 2485 services, the attorney for the trustee shall be allowed further
 2486 reasonable compensation for any extraordinary service. What
 2487 constitutes an extraordinary service may vary depending on many
 2488 factors, including the size of the trust. Extraordinary services
 2489 may include, but are not limited to:

2490 (a) Involvement in a trust contest, trust construction, a
 2491 proceeding for determination of beneficiaries, a contested
 2492 claim, elective share proceedings, apportionment of estate
 2493 taxes, or other adversary proceedings or litigation by or
 2494 against the trust.

2495 (b) Representation of the trustee in an audit or any
 2496 proceeding for adjustment, determination, or collection of any
 2497 taxes.

2498 (c) Tax advice on postmortem tax planning, including, but
 2499 not limited to, disclaimer, renunciation of fiduciary
 2500 commission, alternate valuation date, allocation of
 2501 administrative expenses between tax returns, the QTIP or reverse
 2502 QTIP election, allocation of GST exemption, qualification for
 2503 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
 2504 last illness expenses, distribution planning, asset basis
 2505 considerations, throwback rules, handling income or deductions
 2506 in respect of a decedent, valuation discounts, special use and
 2507 other valuation, handling employee benefit or retirement
 2508 proceeds, prompt assessment request, or request for release from
 2509 personal liability for payment of tax.

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2510 (d) Review of an estate tax return and preparation or
2511 review of other tax returns required to be filed by the trustee.

2512 (e) Preparation of decedent's federal estate tax return.
2513 If this return is prepared by the attorney, a fee of one-half of
2514 1 percent up to a value of \$10 million and one-fourth of 1
2515 percent on the value in excess of \$10 million, of the gross
2516 estate as finally determined for federal estate tax purposes, is
2517 presumed to be reasonable compensation for the attorney for this
2518 service. These fees shall include services for routine audit of
2519 the return, not beyond the examining agent level, if required.

2520 (f) Purchase, sale, lease, or encumbrance of real property
2521 by the trustee or involvement in zoning, land use,
2522 environmental, or other similar matters.

2523 (g) Legal advice regarding carrying on of decedent's
2524 business or conducting other commercial activity by the trustee.

2525 (h) Legal advice regarding claims for damage to the
2526 environment or related procedures.

2527 (i) Legal advice regarding homestead status of trust real
2528 property or proceedings involving the status.

2529 (j) Involvement in fiduciary, employee, or attorney
2530 compensation disputes.

2531 (k) Considerations of special valuation of trust assets,
2532 including discounts for blockage, minority interests, lack of
2533 marketability, and environmental liability.

2534 (6) Upon petition of any interested person in a proceeding
2535 to review the compensation paid or to be paid to the attorney
2536 for the trustee, the court may increase or decrease the
2537 compensation for ordinary services of the attorney for the

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2538 trustee or award compensation for extraordinary services if the
2539 facts and circumstances of the particular administration
2540 warrant. In determining reasonable compensation, the court shall
2541 consider all of the following factors giving such weight to each
2542 as the court may determine to be appropriate:

2543 (a) The promptness, efficiency, and skill with which the
2544 initial administration was handled by the attorney.

2545 (b) The responsibilities assumed by, and potential
2546 liabilities of, the attorney.

2547 (c) The nature and value of the assets that are affected
2548 by the decedent's death.

2549 (d) The benefits or detriments resulting to the trust or
2550 the trust's beneficiaries from the attorney's services.

2551 (e) The complexity or simplicity of the administration and
2552 the novelty of issues presented.

2553 (f) The attorney's participation in tax planning for the
2554 estate, the trust, and the trust's beneficiaries and tax return
2555 preparation or review and approval.

2556 (g) The nature of the trust assets, the expenses of
2557 administration, and the claims payable by the trust and the
2558 compensation paid to other professionals and fiduciaries.

2559 (h) Any delay in payment of the compensation after the
2560 services were furnished.

2561 (i) Any other relevant factors.

2562 (7) The court may determine reasonable attorney's
2563 compensation without receiving expert testimony. Any party may
2564 offer expert testimony after notice to interested persons. If
2565 expert testimony is offered, an expert witness fee may be

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2566 awarded by the court and paid from the assets of the trust. The
2567 court shall direct from what part of the trust the fee is to be
2568 paid.

2569 (8) If a separate written agreement regarding compensation
2570 exists between the attorney and the settlor, the attorney shall
2571 furnish a copy to the trustee prior to commencement of
2572 employment and, if employed, shall promptly file and serve a
2573 copy on all interested persons. A separate agreement or a
2574 provision in the trust suggesting or directing the trustee to
2575 retain a specific attorney does not obligate the trustee to
2576 employ the attorney or obligate the attorney to accept the
2577 representation but, if the attorney who is a party to the
2578 agreement or who drafted the trust is employed, the compensation
2579 paid shall not exceed the compensation provided in the
2580 agreement.

2581 (9) Court proceedings to determine compensation, if
2582 required, are a part of the trust administration process and the
2583 costs, including fees for the trustee's attorney, shall be
2584 determined by the court and paid from the assets of the trust
2585 unless the court finds the attorney's fees request to be
2586 substantially unreasonable. The court shall direct from what
2587 part of the trust the fees are to be paid.

2588 (10) As used in this section, the term "initial trust
2589 administration" means administration of a revocable trust during
2590 the period that begins with the death of the settlor and ends on
2591 the final distribution of trust assets outright or to continuing
2592 trusts created under the trust agreement but, if an estate tax
2593 return is required, not until after issuance of an estate tax

2594 closing letter or other evidence of termination of the estate
 2595 tax proceeding. This initial period is not intended to include
 2596 continued regular administration of the trust.

2597 736.1008 Limitations on proceedings against trustees.--

2598 (1) Except as provided in subsection (2), all claims by a
 2599 beneficiary against a trustee for breach of trust are barred as
 2600 provided in chapter 95 as to:

2601 (a) All matters adequately disclosed in a trust disclosure
 2602 document issued by the trustee, with the limitations period
 2603 beginning on the date of receipt of adequate disclosure.

2604 (b) All matters not adequately disclosed in a trust
 2605 disclosure document if the trustee has issued a final trust
 2606 accounting and has given written notice to the beneficiary of
 2607 the availability of the trust records for examination and that
 2608 any claims with respect to matters not adequately disclosed may
 2609 be barred unless an action is commenced within the applicable
 2610 limitations period provided in chapter 95. The limitations
 2611 period begins on the date of receipt of the final trust
 2612 accounting and notice.

2613 (2) Unless sooner barred by adjudication, consent, or
 2614 limitations, a beneficiary is barred from bringing an action
 2615 against a trustee for breach of trust with respect to a matter
 2616 that was adequately disclosed in a trust disclosure document
 2617 unless a proceeding to assert the claim is commenced within 6
 2618 months after receipt from the trustee of the trust disclosure
 2619 document or a limitation notice that applies to that disclosure
 2620 document, whichever is received later.

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2621 (3) When a trustee has not issued a final trust accounting
2622 or has not given written notice to the beneficiary of the
2623 availability of the trust records for examination and that
2624 claims with respect to matters not adequately disclosed may be
2625 barred, a claim against the trustee for breach of trust based on
2626 a matter not adequately disclosed in a trust disclosure document
2627 accrues when the beneficiary has actual knowledge of the
2628 trustee's repudiation of the trust or adverse possession of
2629 trust assets, and is barred as provided in chapter 95.

2630 (4) As used in this section, the term:

2631 (a) "Trust disclosure document" means a trust accounting
2632 or any other written report of the trustee. A trust disclosure
2633 document adequately discloses a matter if the document provides
2634 sufficient information so that a beneficiary knows of a claim or
2635 reasonably should have inquired into the existence of a claim
2636 with respect to that matter.

2637 (b) "Trust accounting" means an accounting that adequately
2638 discloses the information required by and that substantially
2639 complies with the standards set forth in s. 736.08135.

2640 (c) "Limitation notice" means a written statement of the
2641 trustee that an action by a beneficiary against the trustee for
2642 breach of trust based on any matter adequately disclosed in a
2643 trust disclosure document may be barred unless the action is
2644 commenced within 6 months after receipt of the trust disclosure
2645 document or receipt of a limitation notice that applies to that
2646 trust disclosure document, whichever is later. A limitation
2647 notice may but is not required to be in the following form: "An
2648 action for breach of trust based on matters disclosed in a trust

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

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2649 accounting or other written report of the trustee may be subject
2650 to a 6-month statute of limitations from the receipt of the
2651 trust accounting or other written report. If you have questions,
2652 please consult your attorney."

2653 (5) For purposes of this section, a limitation notice
2654 applies to a trust disclosure document when the limitation
2655 notice is:

2656 (a) Contained as a part of the trust disclosure document
2657 or as a part of another trust disclosure document received
2658 within 1 year prior to the receipt of the latter trust
2659 disclosure document;

2660 (b) Accompanied concurrently by the trust disclosure
2661 document or by another trust disclosure document that was
2662 received within 1 year prior to the receipt of the latter trust
2663 disclosure document;

2664 (c) Delivered separately within 10 days after the delivery
2665 of the trust disclosure document or of another trust disclosure
2666 document that was received within 1 year prior to the receipt of
2667 the latter trust disclosure document. For purposes of this
2668 paragraph, a limitation notice is not delivered separately if
2669 the notice is accompanied by another written communication,
2670 other than a written communication that refers only to the
2671 limitation notice; or

2672 (d) Received more than 10 days after the delivery of the
2673 trust disclosure document but only if the limitation notice
2674 references that trust disclosure document and:

2675 1. Offers to provide to the beneficiary on request another
2676 copy of that trust disclosure document if the document was

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2677 | received by the beneficiary within 1 year prior to receipt of
 2678 | the limitation notice; or

2679 | 2. Is accompanied by another copy of that trust disclosure
 2680 | document if the trust disclosure document was received by the
 2681 | beneficiary 1 year or more prior to the receipt of the
 2682 | limitation notice.

2683 | (6) This section applies to trust accountings for
 2684 | accounting periods beginning on or after January 1, 2008, and to
 2685 | written reports, other than trust accountings, received by a
 2686 | beneficiary on or after January 1, 2008.

2687 | 736.1009 Reliance on trust instrument.--A trustee who acts
 2688 | in reasonable reliance on the terms of the trust as expressed in
 2689 | the trust instrument is not liable to a beneficiary for a breach
 2690 | of trust to the extent the breach resulted from the reliance.

2691 | 736.1010 Event affecting administration or
 2692 | distribution.--If the happening of an event, including marriage,
 2693 | divorce, performance of educational requirements, or death,
 2694 | affects the administration or distribution of a trust, a trustee
 2695 | who has exercised reasonable care to ascertain the happening of
 2696 | the event is not liable for a loss resulting from the trustee's
 2697 | lack of knowledge.

2698 | 736.1011 Exculpation of trustee.--

2699 | (1) A term of a trust relieving a trustee of liability for
 2700 | breach of trust is unenforceable to the extent that the term:

2701 | (a) Relieves the trustee of liability for breach of trust
 2702 | committed in bad faith or with reckless indifference to the
 2703 | purposes of the trust or the interests of the beneficiaries; or

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2704 (b) Was inserted into the trust instrument as the result
 2705 of an abuse by the trustee of a fiduciary or confidential
 2706 relationship with the settlor.

2707 (2) An exculpatory term drafted or caused to be drafted by
 2708 the trustee is invalid as an abuse of a fiduciary or
 2709 confidential relationship unless the trustee proves that the
 2710 exculpatory term is fair under the circumstances and that the
 2711 term's existence and contents were adequately communicated
 2712 directly to the settlor.

2713 736.1012 Beneficiary's consent, release, or
 2714 ratification.--A trustee is not liable to a beneficiary for
 2715 breach of trust if the beneficiary consented to the conduct
 2716 constituting the breach, released the trustee from liability for
 2717 the breach, or ratified the transaction constituting the breach,
 2718 unless:

2719 (1) The consent, release, or ratification of the
 2720 beneficiary was induced by improper conduct of the trustee; or

2721 (2) At the time of the consent, release, or ratification,
 2722 the beneficiary did not know of the beneficiary's rights or of
 2723 the material facts relating to the breach.

2724 736.1013 Limitation on personal liability of trustee.--

2725 (1) Except as otherwise provided in the contract, a
 2726 trustee is not personally liable on a contract properly entered
 2727 into in the trustee's fiduciary capacity in the course of
 2728 administering the trust if the trustee in the contract disclosed
 2729 the fiduciary capacity.

2730 (2) A trustee is personally liable for torts committed in
 2731 the course of administering a trust or for obligations arising

2732 from ownership or control of trust property only if the trustee
 2733 is personally at fault.

2734 (3) A claim based on a contract entered into by a trustee
 2735 in the trustee's fiduciary capacity, on an obligation arising
 2736 from ownership or control of trust property, or on a tort
 2737 committed in the course of administering a trust may be asserted
 2738 in a judicial proceeding against the trustee in the trustee's
 2739 fiduciary capacity, whether or not the trustee is personally
 2740 liable for the claim.

2741 (4) Issues of liability between the trust estate and the
 2742 trustee individually may be determined in a proceeding for
 2743 accounting, surcharge, or indemnification or in any other
 2744 appropriate proceeding.

2745 736.1014 Limitations on actions against certain trusts.--

2746 (1) After the death of a settlor, no creditor of the
 2747 settlor may bring, maintain, or continue any direct action
 2748 against a trust described in s. 733.707(3), the trustee of the
 2749 trust, or any beneficiary of the trust that is dependent on the
 2750 individual liability of the settlor. Such claims and causes of
 2751 action against the settlor shall be presented and enforced
 2752 against the settlor's estate as provided in part VII of chapter
 2753 733 and the personal representative of the settlor's estate may
 2754 obtain payment from the trustee of a trust described in s.
 2755 733.707(3) as provided in ss. 733.607(2), 733.707(3), and
 2756 736.05053.

2757 (2) This section does not preclude a direct action against
 2758 a trust described in s. 733.707(3), the trustee of the trust, or

2759 | a beneficiary of the trust that is not dependent on the
 2760 | individual liability of the settlor.

2761 | (3) This section does not affect the lien of any duly
 2762 | recorded mortgage or security interest or the lien of any person
 2763 | in possession of personal property or the right to foreclose and
 2764 | enforce the mortgage or lien.

2765 | 736.1015 Interest as general partner.--

2766 | (1) Unless personal liability is imposed in the contract,
 2767 | a trustee who holds an interest as a general partner in a
 2768 | general or limited partnership is not personally liable on a
 2769 | contract entered into by the partnership after the trust's
 2770 | acquisition of the interest if the fiduciary capacity was
 2771 | disclosed in the contract or in a statement previously filed
 2772 | pursuant to a Uniform Partnership Act or Uniform Limited
 2773 | Partnership Act.

2774 | (2) A trustee who holds an interest as a general partner
 2775 | is not personally liable for torts committed by the partnership
 2776 | or for obligations arising from ownership or control of the
 2777 | interest unless the trustee is personally at fault.

2778 | (3) If the trustee of a revocable trust holds an interest
 2779 | as a general partner, the settlor is personally liable for
 2780 | contracts and other obligations of the partnership as if the
 2781 | settlor were a general partner.

2782 | 736.1016 Protection of person dealing with trustee.--

2783 | (1) A person other than a beneficiary who in good faith
 2784 | assists a trustee or who in good faith and for value deals with
 2785 | a trustee, without knowledge that the trustee is exceeding or

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2786 improperly exercising the trustee's powers, is protected from
2787 liability as if the trustee properly exercised the power.

2788 (2) A person other than a beneficiary who in good faith
2789 deals with a trustee is not required to inquire into the extent
2790 of the trustee's powers or the propriety of their exercise.

2791 (3) A person who in good faith delivers assets to a
2792 trustee need not ensure their proper application.

2793 (4) A person other than a beneficiary who in good faith
2794 assists a former trustee or who in good faith and for value
2795 deals with a former trustee, without knowledge that the
2796 trusteeship has terminated, is protected from liability as if
2797 the former trustee were still a trustee.

2798 (5) Comparable protective provisions of other laws
2799 relating to commercial transactions or transfer of securities by
2800 fiduciaries prevail over the protection provided by this
2801 section.

2802 736.1017 Certification of trust.--

2803 (1) Instead of furnishing a copy of the trust instrument
2804 to a person other than a beneficiary, the trustee may furnish to
2805 the person a certification of trust containing the following
2806 information:

2807 (a) The trust exists and the date the trust instrument was
2808 executed.

2809 (b) The identity of the settlor.

2810 (c) The identity and address of the currently acting
2811 trustee.

2812 (d) The powers of the trustee.

2813 (e) The revocability or irrevocability of the trust and
2814 the identity of any person holding a power to revoke the trust.

2815 (f) The authority of cotrustees to sign or otherwise
2816 authenticate and whether all or less than all are required in
2817 order to exercise powers of the trustee.

2818 (g) The manner of taking title to trust property.

2819 (2) A certification of trust may be signed or otherwise
2820 authenticated by any trustee.

2821 (3) A certification of trust must state that the trust has
2822 not been revoked, modified, or amended in any manner that would
2823 cause the representations contained in the certification of
2824 trust to be incorrect.

2825 (4) A certification of trust need not contain the
2826 dispositive terms of a trust.

2827 (5) A recipient of a certification of trust may require
2828 the trustee to furnish copies of any excerpts from the original
2829 trust instrument and later amendments that designate the trustee
2830 and confer upon the trustee the power to act in the pending
2831 transaction.

2832 (6) A person who acts in reliance on a certification of
2833 trust without knowledge that the representations contained in
2834 the certification are incorrect is not liable to any person for
2835 so acting and may assume without inquiry the existence of the
2836 facts contained in the certification. Knowledge of the terms of
2837 the trust may not be inferred solely from the fact that a copy
2838 of all or part of the trust instrument is held by the person
2839 relying on the certification.

2840 (7) A person who in good faith enters into a transaction
 2841 in reliance on a certification of trust may enforce the
 2842 transaction against the trust property as if the representations
 2843 contained in the certification were correct.

2844 (8) This section does not limit the right of a person to
 2845 obtain a copy of the trust instrument when required to be
 2846 furnished by law or in a judicial proceeding concerning the
 2847 trust.

2848 736.1018 Improper distribution or payment; liability of
 2849 distributee.--Any person who received a distribution or was paid
 2850 improperly from a trust shall return the assets or funds
 2851 received and the income from those assets or interest on the
 2852 funds from the date of distribution or payment unless the
 2853 distribution or payment cannot be questioned because of
 2854 adjudication, estoppel, or limitations. If the person does not
 2855 have the assets or funds, the value of the assets or funds at
 2856 the date of disposition, income from the assets or funds, and
 2857 gain received by the person from the assets or funds shall be
 2858 returned.

2859 Section 11. Part XI of chapter 736, Florida Statutes,
 2860 consisting of sections 736.1101, 736.1102, 736.1103, 736.1104,
 2861 736.1105, 736.1106, 736.1107, and 736.1108, is created to read:

2863 PART XI

2864 RULES OF CONSTRUCTION

2865
 2866 736.1101 Rules of construction; general
 2867 provisions.--Except as provided in s. 736.0105(2):

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2868 (1) The intent of the settlor as expressed in the terms of
 2869 the trust controls the legal effect of the dispositions made in
 2870 the trust.

2871 (2) The rules of construction as expressed in this part
 2872 shall apply unless a contrary intent is indicated by the terms
 2873 of the trust.

2874 736.1102 Construction of generic terms.--Adopted persons
 2875 and persons born out of wedlock are included in class gift
 2876 terminology and terms of relationship, in accordance with rules
 2877 for determining relationships for purposes of intestate
 2878 succession.

2879 736.1103 Gifts to multi-generation classes to be per
 2880 stirpes.--Class gifts to descendants, issue, and other multi-
 2881 generation classes shall be per stirpes.

2882 736.1104 Killer not entitled to receive property or other
 2883 benefits by reason of victim's death.--

2884 (1) A beneficiary of a trust who unlawfully and
 2885 intentionally kills or unlawfully and intentionally participates
 2886 in procuring the death of the settlor or another person on whose
 2887 death such beneficiary's interest depends, is not entitled to
 2888 any trust interest, including homestead, dependent on the
 2889 victim's death and such interest shall devolve as though the
 2890 killer had predeceased the victim.

2891 (2) A final judgment of conviction of murder in any degree
 2892 is conclusive for the purposes of this section. In the absence
 2893 of a murder conviction in any degree, the court may determine by
 2894 the greater weight of the evidence whether the killing was
 2895 unlawful and intentional for purposes of this section.

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2896 736.1105 Dissolution of marriage; effect on revocable
2897 trust.--Unless the trust instrument or the judgment for
2898 dissolution of marriage or divorce expressly provides otherwise,
2899 if a revocable trust is executed by a husband or wife as settlor
2900 prior to annulment of the marriage or entry of a judgment for
2901 dissolution of marriage or divorce of the settlor from the
2902 settlor's spouse, any provision of the trust that affects the
2903 settlor's spouse will become void upon annulment of the marriage
2904 or entry of the judgment of dissolution of marriage or divorce
2905 and any such trust shall be administered and construed as if the
2906 settlor's spouse had died on the date of the annulment or on
2907 entry of the judgment for dissolution of marriage or divorce.

2908 736.1106 Antilapse; survivorship with respect to future
2909 interests under terms of inter vivos and testamentary trusts;
2910 substitute takers.--

2911 (1) As used in this section, the term:

2912 (a) "Beneficiary" means the beneficiary of a future
2913 interest and includes a class member if the future interest is
2914 in the form of a class gift.

2915 (b) "Distribution date," with respect to a future
2916 interest, means the time when the future interest is to take
2917 effect in possession or enjoyment. The distribution date need
2918 not occur at the beginning or end of a calendar day, but can
2919 occur at a time during the course of a day.

2920 (c) "Future interest" includes an alternative future
2921 interest and a future interest in the form of a class gift.

2922 (d) "Future interest under the terms of a trust" means a
2923 future interest created by an inter vivos or testamentary

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2924 transfer to an existing trust or creating a trust or by an
2925 exercise of a power of appointment to an existing trust
2926 directing the continuance of an existing trust, designating a
2927 beneficiary of an existing trust, or creating a trust.

2928 (e) "Surviving beneficiary" or "surviving descendant"
2929 means a beneficiary or a descendant who did not predecease the
2930 distribution date or is not deemed to have predeceased the
2931 distribution date by operation of law.

2932 (2) A future interest under the terms of a trust is
2933 contingent upon the beneficiary surviving the distribution date.
2934 Unless a contrary intent appears in the trust instrument, if a
2935 beneficiary of a future interest under the terms of a trust
2936 fails to survive the distribution date, and the deceased
2937 beneficiary leaves surviving descendants, a substitute gift is
2938 created in the beneficiary's surviving descendants. They take
2939 per stirpes the property to which the beneficiary would have
2940 been entitled if the beneficiary had survived the distribution
2941 date.

2942 (3) In the application of this section:

2943 (a) Words of survivorship attached to a future interest
2944 are a sufficient indication of an intent contrary to the
2945 application of this section.

2946 (b) A residuary clause in a will is not a sufficient
2947 indication of an intent contrary to the application of this
2948 section, whether or not the will specifically provides that
2949 lapsed or failed devises are to pass under the residuary clause.

2950 (4) If, after the application of subsections (2) and (3),
 2951 there is no surviving taker, the property passes in the
 2952 following order:

2953 (a) If the future interest was created by the exercise of
 2954 a power of appointment, the property passes under the donor's
 2955 gift-in-default clause, if any, which clause is treated as
 2956 creating a future interest under the terms of a trust.

2957 (b) If no taker is produced by the application of
 2958 paragraph (a) and the trust was created in a nonresiduary devise
 2959 or appointment in the transferor's will, the property passes
 2960 under the residuary clause in the transferor's will. For
 2961 purposes of this section, the residuary clause is treated as
 2962 creating a future interest under the terms of a trust.

2963 (c) If no taker is produced by the application of
 2964 paragraph (a) or paragraph (b), the property passes to those
 2965 persons, including the state, and in such shares as would
 2966 succeed to the transferor's intestate estate under the intestate
 2967 succession law of the transferor's domicile if the transferor
 2968 died when the disposition is to take effect in possession or
 2969 enjoyment.

2970
 2971 For purposes of paragraphs (b) and (c), the term "transferor"
 2972 with respect to a future interest created by the exercise of a
 2973 power of appointment, means the donor if the power was a
 2974 nongeneral power and the donee if the power was a general power.

2975 (5) This section applies to all trusts other than trusts
 2976 that were irrevocable before the effective date of this code.

2977 736.1107 Change in securities; accessions;
 2978 nonademption.--A gift of specific securities, rather than their
 2979 equivalent value, entitles the beneficiary only to:

2980 (1) As much of the gifted securities of the same issuer
 2981 held by the trust estate at the time of the occurrence of the
 2982 event entitling the beneficiary to distribution.

2983 (2) Any additional or other securities of the same issuer
 2984 held by the trust estate because of action initiated by the
 2985 issuer, excluding any acquired by exercise of purchase options.

2986 (3) Securities of another issuer held by the trust estate
 2987 as a result of a merger, consolidation, reorganization, or other
 2988 similar action initiated by the original issuer.

2989 736.1108 Penalty clause for contest.--

2990 (1) A provision in a trust instrument purporting to
 2991 penalize any interested person for contesting the trust
 2992 instrument or instituting other proceedings relating to a trust
 2993 estate or trust assets is unenforceable.

2994 (2) This section applies to trusts created on or after
 2995 October 1, 1993. For purposes of this subsection, a revocable
 2996 trust shall be treated as created when the right of revocation
 2997 terminates.

2998 Section 12. Part XII of chapter 736, Florida Statutes,
 2999 consisting of sections 736.1201, 736.1202, 736.1203, 736.1204,
 3000 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and 736.1210,
 3001 is created to read:

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PART XII

CHARITABLE TRUSTS

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736.1201 Definitions.--As used in this part:

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

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

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

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

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

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

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

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

3033 (1) In the exercise of a trustee's powers, including the
 3034 powers granted by this part, a trustee has a duty to act with
 3035 due regard to the trustee's obligation as a fiduciary, including
 3036 a duty not to exercise any power in such a way as to:

3037 (a) Deprive the trust of an otherwise available tax
 3038 exemption, deduction, or credit for tax purposes;

3039 (b) Deprive a donor of a trust asset or tax deduction or
 3040 credit; or

3041 (c) Operate to impose a tax on a donor, trust, or other
 3042 person.

3043
 3044 For purposes of this subsection, the term "tax" includes, but is
 3045 not limited to, any federal, state, or local excise, income,
 3046 gift, estate, or inheritance tax.

3047 (2) Except as provided in s. 736.1205, a trustee of a
 3048 private foundation trust shall make distributions at such time
 3049 and in such manner as not to subject the trust to tax under s.
 3050 4942 of the Internal Revenue Code.

3051 (3) Except as provided in subsection (4) and in s.
 3052 736.1205, a trustee of a private foundation trust, or a split
 3053 interest trust to the extent that the split interest trust is
 3054 subject to the provisions of s. 4947(a)(2) of the Internal
 3055 Revenue Code, in the exercise of the trustee's powers shall not:

3056 (a) Engage in any act of self-dealing as defined in s.
 3057 4941(d) of the Internal Revenue Code;

3058 (b) Retain any excess business holdings as defined in s.
 3059 4943(c) of the Internal Revenue Code;

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3060 (c) Make any investments in a manner that subjects the
3061 foundation to tax under s. 4944 of the Internal Revenue Code; or

3062 (d) Make any taxable expenditures as defined in s. 4945(d)
3063 of the Internal Revenue Code.

3064 (4) Paragraphs (3)(b) and (c) shall not apply to a split
3065 interest trust if:

3066 (a) All the interest from income, and none of the
3067 remainder interest, of the trust is devoted solely to one or
3068 more of the purposes described in s. 170(c)(2)(B) of the
3069 Internal Revenue Code, and all amounts in the trust for which a
3070 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
3071 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
3072 Revenue Code have an aggregate fair market value of not more
3073 than 60 percent of the aggregate fair market value of all
3074 amounts in the trust; or

3075 (b) A deduction was allowed under s. 170, s. 545(b)(2), s.
3076 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the
3077 Internal Revenue Code for amounts payable under the terms of the
3078 trust to every remainder beneficiary but not to any income
3079 beneficiary.

3080 736.1205 Notice that this part does not apply.--In the
3081 case of a power to make distributions, if the trustee determines
3082 that the governing instrument contains provisions that are more
3083 restrictive than s. 736.1204(2), or if the trust contains other
3084 powers, inconsistent with the provisions of s. 736.1204(3) that
3085 specifically direct acts by the trustee, the trustee shall
3086 notify the state attorney when the trust becomes subject to this
3087 part. Section 736.1204 does not apply to any trust for which

3088 notice has been given pursuant to this section unless the trust
 3089 is amended to comply with the terms of this part.

3090 736.1206 Power to amend trust instrument.--

3091 (1) In the case of a trust that is solely for a named
 3092 charitable organization or organizations and for which the
 3093 trustee does not possess any discretion concerning the
 3094 distribution of income or principal among two or more such
 3095 organizations, the trustee may amend the governing instrument to
 3096 comply with the provisions of s. 736.1204(2) with the consent of
 3097 the named charitable organization or organizations.

3098 (2) In the case of a charitable trust that is not subject
 3099 to the provisions of subsection (1), the trustee may amend the
 3100 governing instrument to comply with the provisions of s.
 3101 736.1204(2) with the consent of the state attorney.

3102 736.1207 Power of court to permit deviation.--This part
 3103 does not affect the power of a court to relieve a trustee from
 3104 any restrictions on the powers and duties that are placed on the
 3105 trustee by the governing instrument or applicable law for cause
 3106 shown and on complaint of the trustee, state attorney, or an
 3107 affected beneficiary and notice to the affected parties.

3108 736.1208 Release; property and persons affected; manner of
 3109 effecting.--

3110 (1) The trustee of a trust, all of the unexpired interests
 3111 in which are devoted to one or more charitable purposes, may
 3112 release a power to select charitable donees unless the creating
 3113 instrument provides otherwise.

3114 (2) The release of a power to select charitable donees may
 3115 apply to all or any part of the property subject to the power

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3116 and may reduce or limit the charitable organizations, or classes
3117 of charitable organizations, in whose favor the power is
3118 exercisable.

3119 (3) A release shall be effected by a duly acknowledged
3120 written instrument signed by the trustee and delivered as
3121 provided in subsection (4).

3122 (4) Delivery of a release shall be accomplished as
3123 follows:

3124 (a) If the release is accomplished by specifying a
3125 charitable organization or organizations as beneficiary or
3126 beneficiaries of the trust, by delivery of a copy of the release
3127 to each designated charitable organization.

3128 (b) If the release is accomplished by reducing the class
3129 of permissible charitable organizations, by delivery of a copy
3130 of the release to the state attorney.

3131 (5) If a release is accomplished by specifying a public
3132 charitable organization or organizations as beneficiary or
3133 beneficiaries of the trust, the trust at all times thereafter
3134 shall be operated exclusively for the benefit of, and be
3135 supervised by, the specified public charitable organization or
3136 organizations.

3137 736.1209 Election to come under this part.--With the
3138 consent of that organization or organizations, a trustee of a
3139 trust for the benefit of a public charitable organization or
3140 organizations may come under s. 736.0838(5) by filing with the
3141 state attorney an election, accompanied by the proof of required
3142 consent. Thereafter the trust shall be subject to s.
3143 736.1208(5).

3144 736.1210 Interpretation.--This part shall be interpreted
 3145 to effectuate the intent of the state to preserve, foster, and
 3146 encourage gifts to, or for the benefit of, charitable
 3147 organizations.

3148 Section 13. Part XIII of chapter 736, Florida Statutes,
 3149 consisting of sections 736.1301, 736.1302, and 736.1303, is
 3150 created to read:

3151
 3152 PART XIII
 3153 MISCELLANEOUS

3154
 3155 736.1301 Electronic records and signatures.--Any
 3156 provisions of this code governing the legal effect, validity, or
 3157 enforceability of electronic records or electronic signatures,
 3158 and of contracts formed or performed with the use of such
 3159 records or signatures, are deemed to conform to the requirements
 3160 of s. 102 of the Electronic Signatures in Global and National
 3161 Commerce Act, 15 U.S.C. s. 7002, and supersede, modify, and
 3162 limit the requirements of the Electronic Signatures in Global
 3163 and National Commerce Act.

3164 736.1302 Severability clause.--If any provision of this
 3165 code or its application to any person or circumstances is held
 3166 invalid, the invalidity does not affect other provisions or
 3167 applications of this code that can be given effect without the
 3168 invalid provision or application, and to this end the provisions
 3169 of this code are severable.

3170 736.1303 Application to existing relationships.--

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3171 (1) Except as otherwise provided in this code, on July 1,
3172 2007:

3173 (a) This code applies to all trusts created before, on, or
3174 after such date.

3175 (b) This code applies to all judicial proceedings
3176 concerning trusts commenced on or after such date.

3177 (c) This code applies to judicial proceedings concerning
3178 trusts commenced before such date, unless the court finds that
3179 application of a particular provision of this code would
3180 substantially interfere with the effective conduct of the
3181 judicial proceedings or prejudice the rights of the parties, in
3182 which case the particular provision of this code does not apply
3183 and the superseded law applies.

3184 (d) Any rule of construction or presumption provided in
3185 this code applies to trust instruments executed before the
3186 effective date of this code unless there is a clear indication
3187 of a contrary intent in the terms of the trust.

3188 (e) An act done before such date is not affected by this
3189 code.

3190 (2) If a right is acquired, extinguished, or barred on the
3191 expiration of a prescribed period that has commenced to run
3192 under any other law before July 1, 2007, that law continues to
3193 apply to the right even if it has been repealed or superseded.

3194 Section 14. Paragraph (a) of subsection (5) of section
3195 497.458, Florida Statutes, is amended to read:

3196 497.458 Disposition of proceeds received on contracts.--

3197 (5) The trustee of the trust established pursuant to this
3198 section shall only have the power to:

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3199 (a) Invest in investments as prescribed in s. 215.47 and
 3200 exercise the powers set forth in part VIII of chapter 736 ~~part~~
 3201 ~~IV of chapter 737~~, provided that the licensing authority may by
 3202 order require the trustee to liquidate or dispose of any
 3203 investment within 30 days after such order, or within such other
 3204 times as the order may direct. The licensing authority may issue
 3205 such order if it determines that the investment violates any
 3206 provision of this chapter or is not in the best interests of the
 3207 preneed contract holders whose contracts are secured by the
 3208 trust funds.

3209 Section 15. Section 518.117, Florida Statutes, is created
 3210 to read:

3211 518.117 Permissible investments of fiduciary funds.--A
 3212 fiduciary that is authorized by lawful authority to engage in
 3213 trust business as defined in s. 658.12(20) may invest fiduciary
 3214 funds in accordance with s. 660.417 so long as the investment
 3215 otherwise complies with this chapter.

3216 Section 16. Subsection (2) of section 607.0802, Florida
 3217 Statutes, is amended to read:

3218 607.0802 Qualifications of directors.--

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

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3227 or mobile home shall be deemed a member of the association and
 3228 eligible to serve as a director of the condominium association,
 3229 cooperative association, homeowners' association, or mobile home
 3230 owners' association, provided that said beneficiary occupies the
 3231 unit, parcel, or mobile home.

3232 Section 17. Subsection (2) of section 617.0802, Florida
 3233 Statutes, is amended to read:

3234 617.0802 Qualifications of directors.--

3235 (2) In the event that the eligibility to serve as a member
 3236 of the board of directors of a condominium association,
 3237 cooperative association, homeowners' association, or mobile home
 3238 owners' association is restricted to membership in such
 3239 association and membership is appurtenant to ownership of a
 3240 unit, parcel, or mobile home, a grantor of a trust described in
 3241 s. 733.707(3), or a qualified beneficiary as defined in s.
 3242 736.0103(14) ~~737.303(4)(b)~~ of a trust which owns a unit, parcel,
 3243 or mobile home shall be deemed a member of the association and
 3244 eligible to serve as a director of the condominium association,
 3245 cooperative association, homeowners' association, or mobile home
 3246 owners' association, provided that said beneficiary occupies the
 3247 unit, parcel, or mobile home.

3248 Section 18. Subsection (6) of section 660.25, Florida
 3249 Statutes, renumbered as subsection (7) and amended, and a new
 3250 subsection (6) is added to that section, to read:

3251 660.25 Definitions.--Subject to other definitions
 3252 contained in other sections of this code, and unless the context
 3253 otherwise requires, in this chapter:

3254 (6) "Investment instrument" means any security as defined
 3255 in s. 2(a)(1) of the Securities Act of 1933; any security of an
 3256 open-end or closed-end management investment company or
 3257 investment trust registered under the Investment Company Act of
 3258 1940, 15 U.S.C. ss. 80a-1 et seq., as amended; any contract of
 3259 sale of a commodity for future delivery within the meaning of s.
 3260 2(i) of the Commodity Exchange Act; or any other interest in
 3261 securities, including, but not limited to, shares or interests
 3262 in a private investment fund, including, but not limited to, a
 3263 private investment fund organized as a limited partnership, a
 3264 limited liability company, a statutory or common law business
 3265 trust, a statutory trust, or a real estate investment trust, a
 3266 joint venture, or any other general or limited partnership;
 3267 derivatives or other interests of any nature in securities such
 3268 as options, options on futures, and variable forward contracts;
 3269 mutual funds; common trust funds; money market funds; hedge
 3270 funds; private equity or venture capital funds; insurance
 3271 contracts; and other entities or vehicles investing in
 3272 securities or interests in securities whether registered or
 3273 otherwise.

3274 ~~(7)(6)~~ Terms used but not defined in this chapter, but
 3275 which are expressly defined in chapter 518, the financial
 3276 institutions codes, chapter 732, chapter 733, chapter 734,
 3277 chapter 735, chapter 736 ~~737~~, chapter 738, chapter 744, or
 3278 chapter 747, shall in this chapter, unless the context otherwise
 3279 requires, have the meanings ascribed to them in said chapters;
 3280 and references in any of said chapters to a "trust company" or

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3281 to "trust companies" shall include every trust department as
3282 defined in s. 658.12.

3283 Section 19. Section 660.417, Florida Statutes, is amended
3284 to read:

3285 660.417 Investment of fiduciary funds in investment
3286 instruments ~~into mutual fund accounts~~; permissible activity
3287 under certain circumstances; limitations.--

3288 (1) In addition to other investments authorized by law for
3289 the investment of funds held by a fiduciary, or by the
3290 instrument governing the fiduciary relationship, ~~and~~
3291 ~~notwithstanding any other provision of law~~, a bank or trust
3292 company acting as a fiduciary, agent or otherwise may, in the
3293 exercise of its investment discretion or at the direction of
3294 another person authorized to direct investment of funds held by
3295 the bank or trust company as fiduciary, invest and reinvest in
3296 investment instruments ~~the securities of an open end or closed-~~
3297 ~~end management investment company or investment trust registered~~
3298 ~~under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et~~
3299 ~~seq., as amended~~, so long as the ~~portfolio of such investment~~
3300 instruments consist ~~company or investment trust consists~~
3301 substantially of investments not prohibited by the governing
3302 instrument.

3303 (2) The fact that such bank or trust company or an
3304 affiliate of the bank or trust company provides services with
3305 respect to ~~the investment instruments~~ company or investment
3306 ~~trust~~ such as that of an investment adviser, administrator,
3307 broker, custodian, transfer agent, placement agent, servicing
3308 agent, registrar, underwriter, sponsor, distributor, or manager

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3309 | or in any other capacity, ~~otherwise~~ and is receiving reasonable
3310 | compensation for those services, shall not preclude such bank or
3311 | trust company from investing or reinvesting in investment
3312 | instruments ~~the securities of the open end or closed end~~
3313 | ~~management investment trust registered under the Investment~~
3314 | ~~Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended.~~
3315 | However, with respect to any funds so invested, the basis
3316 | (expressed as a percentage of asset value or otherwise) upon
3317 | which such compensation is calculated shall be disclosed (by
3318 | prospectus, account statement or otherwise) to all persons to
3319 | whom statements of such account are rendered.

3320 | (3) The fact that such bank or trust company or an
3321 | affiliate of the bank or trust company owns or controls
3322 | investment instruments shall not preclude the bank or trust
3323 | company acting as a fiduciary from investing or reinvesting in
3324 | such investment instruments, provided such investment
3325 | instruments:

3326 | (a) Are held for sale by the bank or trust company or by
3327 | an affiliate of the bank or trust company in the ordinary course
3328 | of its business of providing investment services to its
3329 | customers and do not include any such interests held by the bank
3330 | or trust company or by an affiliate of the bank or trust company
3331 | for its own account.

3332 | (b) Are sold primarily to accounts for which the bank or
3333 | trust company is not acting as a fiduciary upon terms that are
3334 | not more favorable to the buyer than the terms upon which they
3335 | are sold to accounts for which the bank or trust company is
3336 | acting as a fiduciary.

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3337 Section 20. Paragraphs (a), (d), and (e) of subsection (1)
3338 and subsections (2), (3), (9), and (10) of section 660.46,
3339 Florida Statutes, are amended to read:

3340 660.46 Substitution of fiduciaries.--

3341 (1) The provisions of this section shall apply to the
3342 transfer of fiduciary accounts by substitution, and for those
3343 purposes these provisions shall constitute alternative
3344 procedures to those provided or required by any other provisions
3345 of law relating to the transfer of fiduciary accounts or the
3346 substitution of persons acting or who are to act in a fiduciary
3347 capacity. In this section, and only for its purposes, the term:

3348 (a) "Limitation notice" has the meaning ascribed in s.
3349 736.1008(4) ~~737.307(3)~~.

3350 (d) "Trust accounting" has the meaning ascribed in s.
3351 736.08135 ~~737.3035~~.

3352 (e) "Trust disclosure document" has the meaning ascribed
3353 in s. 736.1008(4)(a) ~~737.307(2)~~.

3354 (2) Any original fiduciary and any proposed substitute
3355 fiduciary may, with respect to any fiduciary account or accounts
3356 which they shall mutually select, initiate proceedings by
3357 joining in the filing of a petition in the circuit court,
3358 requesting the substitution of the proposed substitute fiduciary
3359 for the original fiduciary as to such fiduciary account or
3360 accounts. The petition may be filed in the county in which the
3361 main office of the original fiduciary is located and, except to
3362 the extent inconsistent with the provisions of this section,
3363 shall be governed by the Florida Rules of Civil Procedure;
3364 however, if any fiduciary account is then the subject of a

3365 proceeding in a court in this state pursuant to the Florida
 3366 Probate Code, the Florida Guardianship Law, chapter 736 ~~737~~, or
 3367 chapter 747, the petition relating to such fiduciary account
 3368 shall be filed in that proceeding and shall be governed by the
 3369 procedural or other relevant rules applicable to such proceeding
 3370 except to the extent inconsistent with the provisions of this
 3371 section.

3372 (3) Unless a waiver or consent shall be filed in the
 3373 proceedings as provided in subsection (4), the provisions of s.
 3374 731.301(1) and (2) shall apply with respect to notice of the
 3375 proceedings to all persons who are then cofiduciaries with the
 3376 original fiduciary, other than a person joining as a petitioner
 3377 in the proceedings; to all persons named in the governing
 3378 instrument as substitutes or successors to the fiduciary
 3379 capacity of the original fiduciary; to the persons then living
 3380 who are entitled under the governing instrument to appoint a
 3381 substitute or successor to act in the fiduciary capacity of the
 3382 original fiduciary; to all vested beneficiaries of the fiduciary
 3383 account; and to all then-living originators of the governing
 3384 instrument. Unless a waiver or consent shall be filed in the
 3385 proceedings as provided in subsection (4), the provisions of s.
 3386 731.301 shall apply with respect to notice to all contingent
 3387 beneficiaries of the fiduciary account. Only the persons or
 3388 classes of persons described in the foregoing provisions of this
 3389 subsection shall be deemed to be interested persons for the
 3390 purposes of this section and the proceedings and notices
 3391 provided for in this section; and the provisions of ss.
 3392 731.301(3) and 731.303(3) and~~7~~ (4)~~7~~ and ~~(5)~~~~7~~ part III of chapter

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3393 | 736, relating to notice requirements, the effect of notice, and
 3394 | representation of interests, shall apply to the proceedings
 3395 | provided for in this section.

3396 | (9) Unless previously or otherwise barred by adjudication,
 3397 | waiver, consent, limitation, or the provisions of subsection
 3398 | (8), an action for breach of trust or breach of fiduciary duties
 3399 | or responsibilities against an original fiduciary in whose place
 3400 | and stead another trust company or trust department has been
 3401 | substituted pursuant to the provisions of this section is barred
 3402 | for any beneficiary who has received a trust disclosure document
 3403 | adequately disclosing the matter unless a proceeding to assert
 3404 | the claim is commenced within 6 months after receipt of the
 3405 | trust disclosure document or the limitation notice that applies
 3406 | to the trust disclosure document, whichever is received later.
 3407 | In any event, and notwithstanding lack of adequate disclosure,
 3408 | all claims against such original fiduciary which has complied
 3409 | with the requirements of s. 736.1008 ~~issued a final trust~~
 3410 | ~~disclosure document received by the beneficiary and has informed~~
 3411 | ~~the beneficiary of the location and availability of records for~~
 3412 | ~~his or her examination~~ are barred as provided in chapter 95.
 3413 | Section 736.1008(4)(a) and (c) ~~737.307(2) and (3)~~ applies to
 3414 | this subsection.

3415 | (10) A beneficiary has received a final trust disclosure
 3416 | document or a limitation notice if, when the beneficiary is an
 3417 | adult, it is received by him or her or if, when the beneficiary
 3418 | is a minor or a disabled person, it is received by his or her
 3419 | representative as provided in part III of chapter 736 ~~defined in~~
 3420 | ~~s. 731.303.~~

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3421 Section 21. Section 660.418, Florida Statutes, is amended
3422 to read:

3423 660.418 Investment of fiduciary funds in syndicate
3424 securities.--Notwithstanding any other provision of law, any
3425 financial institution with fiduciary powers may, in its
3426 fiduciary capacity, purchase bonds or other securities
3427 underwritten or otherwise distributed by the financial
3428 institution or by a syndicate that includes the financial
3429 institution, or an affiliate of the financial institution,
3430 provided that such purchase is made through a licensed
3431 securities dealer, is otherwise prudent, and is not prohibited
3432 by the instrument governing the fiduciary relationship and that
3433 disclosure is made at least annually to those persons entitled
3434 to a statement of accounts pursuant to s. 736.0813 ~~737.303(4)~~
3435 indicating that such securities have been or may be purchased.
3436 This section applies to purchases of bonds or other securities
3437 made at the time of the initial offering of such bonds or
3438 securities or at any time after such initial offering.

3439 Section 22. Subsection (5) of section 689.071, Florida
3440 Statutes, is amended to read:

3441 689.071 Land trusts transferring interests in real estate;
3442 ownership vests in trustee.--

3443 (5) In addition to any other limitation on personal
3444 liability existing pursuant to statute or otherwise, the
3445 provisions of s. 736.1013 ~~737.306~~ apply to the trustee of a land
3446 trust created pursuant to this section.

3447 Section 23. Subsections (1) and (4) of section 689.075,
3448 Florida Statutes, are amended to read:

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3449 | 689.075 Inter vivos trusts; powers retained by settlor.--
 3450 | (1) A trust which is otherwise valid and which complies
 3451 | with s. 736.0403 ~~737.111~~, including, but not limited to, a trust
 3452 | the principal of which is composed of real property, intangible
 3453 | personal property, tangible personal property, the possible
 3454 | expectancy of receiving as a named beneficiary death benefits as
 3455 | described in s. 733.808, or any combination thereof, and which
 3456 | has been created by a written instrument shall not be held
 3457 | invalid or an attempted testamentary disposition for any one or
 3458 | more of the following reasons:
 3459 | (a) Because the settlor or another person or both possess
 3460 | the power to revoke, amend, alter, or modify the trust in whole
 3461 | or in part;
 3462 | (b) Because the settlor or another person or both possess
 3463 | the power to appoint by deed or will the persons and
 3464 | organizations to whom the income shall be paid or the principal
 3465 | distributed;
 3466 | (c) Because the settlor or another person or both possess
 3467 | the power to add to, or withdraw from, the trust all or any part
 3468 | of the principal or income at one time or at different times;
 3469 | (d) Because the settlor or another person or both possess
 3470 | the power to remove the trustee or trustees and appoint a
 3471 | successor trustee or trustees;
 3472 | (e) Because the settlor or another person or both possess
 3473 | the power to control the trustee or trustees in the
 3474 | administration of the trust;

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3475 (f) Because the settlor has retained the right to receive
3476 all or part of the income of the trust during her or his life or
3477 for any part thereof; or

3478 (g) Because the settlor is, at the time of the execution
3479 of the instrument, or thereafter becomes, sole trustee.

3480 (4) This section shall be applicable to trusts executed
3481 before or after July 1, 1969, by persons who are living on or
3482 after said date. ~~However, the requirement of conformity with the~~
3483 ~~formalities for the execution of wills as found in paragraph~~
3484 ~~(1)(g) shall not be imposed upon any trust executed prior to~~
3485 ~~July 1, 1969.~~

3486 Section 24. Section 689.175, Florida Statutes, is created
3487 to read:

3488 689.175 Worthier title doctrine abolished.--The doctrine
3489 of worthier title is abolished as a rule of law and as a rule of
3490 construction. Language in a governing instrument describing the
3491 beneficiaries of a disposition as the transferor's "heirs,"
3492 "heirs at law," "next of kin," "distributees," "relatives," or
3493 "family," or language of similar import, does not create or
3494 presumptively create a reversionary interest in the transferor.

3495 Section 25. Subsection (8) of section 709.08, Florida
3496 Statutes, is amended to read:

3497 709.08 Durable power of attorney.--

3498 (8) STANDARD OF CARE.--Except as otherwise provided in
3499 paragraph (4)(e), an attorney in fact is a fiduciary who must
3500 observe the standards of care applicable to trustees as
3501 described in s. 736.0901 ~~737.302~~. The attorney in fact is not
3502 liable to third parties for any act pursuant to the durable

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3503 power of attorney if the act was authorized at the time. If the
 3504 exercise of the power is improper, the attorney in fact is
 3505 liable to interested persons as described in s. 731.201 for
 3506 damage or loss resulting from a breach of fiduciary duty by the
 3507 attorney in fact to the same extent as the trustee of an express
 3508 trust.

3509 Section 26. Paragraph (c) of subsection (2) of section
 3510 721.08, Florida Statutes, is amended to read:

3511 721.08 Escrow accounts; nondisturbance instruments;
 3512 alternate security arrangements; transfer of legal title.--

3513 (2) One hundred percent of all funds or other property
 3514 which is received from or on behalf of purchasers of the
 3515 timeshare plan or timeshare interest prior to the occurrence of
 3516 events required in this subsection shall be deposited pursuant
 3517 to an escrow agreement approved by the division. The funds or
 3518 other property may be released from escrow only as follows:

3519 (c) Compliance with conditions.--

3520 1. Timeshare licenses.--If the timeshare plan is one in
 3521 which timeshare licenses are to be sold and no cancellation or
 3522 default has occurred, the escrow agent may release the escrowed
 3523 funds or other property to or on the order of the developer upon
 3524 presentation of:

3525 a. An affidavit by the developer that all of the following
 3526 conditions have been met:

3527 (I) Expiration of the cancellation period.

3528 (II) Completion of construction.

3529 (III) Closing.

3530 (IV) Either:

3531 (A) Execution, delivery, and recordation by each
 3532 interestholder of the nondisturbance and notice to creditors
 3533 instrument, as described in this section; or

3534 (B) Transfer by the developer of legal title to the
 3535 subject accommodations and facilities, or all use rights
 3536 therein, into a trust satisfying the requirements of
 3537 subparagraph 4. and the execution, delivery, and recordation by
 3538 each other interestholder of the nondisturbance and notice to
 3539 creditors instrument, as described in this section.

3540 b. A certified copy of each recorded nondisturbance and
 3541 notice to creditors instrument.

3542 c. One of the following:

3543 (I) A copy of a memorandum of agreement, as defined in s.
 3544 721.05, together with satisfactory evidence that the original
 3545 memorandum of agreement has been irretrievably delivered for
 3546 recording to the appropriate official responsible for
 3547 maintaining the public records in the county in which the
 3548 subject accommodations and facilities are located. The original
 3549 memorandum of agreement must be recorded within 180 days after
 3550 the date on which the purchaser executed her or his purchase
 3551 agreement.

3552 (II) A notice delivered for recording to the appropriate
 3553 official responsible for maintaining the public records in each
 3554 county in which the subject accommodations and facilities are
 3555 located notifying all persons of the identity of an independent
 3556 escrow agent or trustee satisfying the requirements of
 3557 subparagraph 4. that shall maintain separate books and records,
 3558 in accordance with good accounting practices, for the timeshare

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3559 | plan in which timeshare licenses are to be sold. The books and
 3560 | records shall indicate each accommodation and facility that is
 3561 | subject to such a timeshare plan and each purchaser of a
 3562 | timeshare license in the timeshare plan.

3563 | 2. Timeshare estates.--If the timeshare plan is one in
 3564 | which timeshare estates are to be sold and no cancellation or
 3565 | default has occurred, the escrow agent may release the escrowed
 3566 | funds or other property to or on the order of the developer upon
 3567 | presentation of:

3568 | a. An affidavit by the developer that all of the following
 3569 | conditions have been met:

3570 | (I) Expiration of the cancellation period.

3571 | (II) Completion of construction.

3572 | (III) Closing.

3573 | b. If the timeshare estate is sold by agreement for deed,
 3574 | a certified copy of the recorded nondisturbance and notice to
 3575 | creditors instrument, as described in this section.

3576 | c. Evidence that each accommodation and facility:

3577 | (I) Is free and clear of the claims of any
 3578 | interestholders, other than the claims of interestholders that,
 3579 | through a recorded instrument, are irrevocably made subject to
 3580 | the timeshare instrument and the use rights of purchasers made
 3581 | available through the timeshare instrument;

3582 | (II) Is the subject of a recorded nondisturbance and
 3583 | notice to creditors instrument that complies with subsection (3)
 3584 | and s. 721.17; or

3585 | (III) Has been transferred into a trust satisfying the
 3586 | requirements of subparagraph 4.

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3587 | d. Evidence that the timeshare estate:
 3588 | (I) Is free and clear of the claims of any
 3589 | interestholders, other than the claims of interestholders that,
 3590 | through a recorded instrument, are irrevocably made subject to
 3591 | the timeshare instrument and the use rights of purchasers made
 3592 | available through the timeshare instrument; or
 3593 | (II) Is the subject of a recorded nondisturbance and
 3594 | notice to creditors instrument that complies with subsection (3)
 3595 | and s. 721.17.
 3596 | 3. Personal property timeshare interests.--If the
 3597 | timeshare plan is one in which personal property timeshare
 3598 | interests are to be sold and no cancellation or default has
 3599 | occurred, the escrow agent may release the escrowed funds or
 3600 | other property to or on the order of the developer upon
 3601 | presentation of:
 3602 | a. An affidavit by the developer that all of the following
 3603 | conditions have been met:
 3604 | (I) Expiration of the cancellation period.
 3605 | (II) Completion of construction.
 3606 | (III) Closing.
 3607 | b. If the personal property timeshare interest is sold by
 3608 | agreement for transfer, evidence that the agreement for transfer
 3609 | complies fully with s. 721.06 and this section.
 3610 | c. Evidence that one of the following has occurred:
 3611 | (I) Transfer by the owner of the underlying personal
 3612 | property of legal title to the subject accommodations and
 3613 | facilities or all use rights therein into a trust satisfying the
 3614 | requirements of subparagraph 4.; or

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3615 (II) Transfer by the owner of the underlying personal
3616 property of legal title to the subject accommodations and
3617 facilities or all use rights therein into an owners' association
3618 satisfying the requirements of subparagraph 5.

3619 d. Evidence of compliance with the provisions of
3620 subparagraph 6., if required.

3621 e. If a personal property timeshare plan is created with
3622 respect to accommodations and facilities that are located on or
3623 in an oceangoing vessel, including a "documented vessel" or a
3624 "foreign vessel," as defined and governed by 46 U.S.C., chapter
3625 301:

3626 (I) In making the transfer required in sub-subparagraph
3627 c., the developer shall use as its transfer instrument a
3628 document that establishes and protects the continuance of the
3629 use rights in the subject accommodations and facilities in a
3630 manner that is enforceable by the trust or owners' association.

3631 (II) The transfer instrument shall comply fully with the
3632 provisions of this chapter, shall be part of the timeshare
3633 instrument, and shall contain specific provisions that:

3634 (A) Prohibit the vessel owner, the developer, any manager
3635 or operator of the vessel, the owners' association or the
3636 trustee, the managing entity, or any other person from incurring
3637 any liens against the vessel except for liens that are required
3638 for the operation and upkeep of the vessel, including liens for
3639 fuel expenditures, repairs, crews' wages, and salvage, and
3640 except as provided in sub-sub-subparagraphs 4.b.(III) and
3641 5.b.(III). All expenses, fees, and taxes properly incurred in
3642 connection with the creation, satisfaction, and discharge of any

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3643 such permitted lien, or a prorated portion thereof if less than
3644 all of the accommodations on the vessel are subject to the
3645 timeshare plan, shall be common expenses of the timeshare plan.

3646 (B) Grant a lien against the vessel in favor of the
3647 owners' association or trustee to secure the full and faithful
3648 performance of the vessel owner and developer of all of their
3649 obligations to the purchasers.

3650 (C) Establish governing law in a jurisdiction that
3651 recognizes and will enforce the timeshare instrument and the
3652 laws of the jurisdiction of registry of the vessel.

3653 (D) Require that a description of the use rights of
3654 purchasers be posted and displayed on the vessel in a manner
3655 that will give notice of such rights to any party examining the
3656 vessel. This notice must identify the owners' association or
3657 trustee and include a statement disclosing the limitation on
3658 incurring liens against the vessel described in sub-sub-sub-
3659 subparagraph (A).

3660 (E) Include the nondisturbance and notice to creditors
3661 instrument for the vessel owner and any other interestholders.

3662 (F) The owners' association created under subparagraph 5.
3663 or trustee created under subparagraph 4. shall have access to
3664 any certificates of classification in accordance with the
3665 timeshare instrument.

3666 (III) If the vessel is a foreign vessel, the vessel must
3667 be registered in a jurisdiction that permits a filing evidencing
3668 the use rights of purchasers in the subject accommodations and
3669 facilities, offers protection for such use rights against
3670 unfiled and inferior claims, and recognizes the document or

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3671 instrument creating such use rights as a lien against the
3672 vessel.

3673 (IV) In addition to the disclosures required by s.
3674 721.07(5), the public offering statement and purchase contract
3675 must contain a disclosure in conspicuous type in substantially
3676 the following form:

3677
3678 The laws of the State of Florida govern the offering of this
3679 timeshare plan in this state. There are inherent risks in
3680 purchasing a timeshare interest in this timeshare plan because
3681 the accommodations and facilities of the timeshare plan are
3682 located on a vessel that will sail into international waters and
3683 into waters governed by many different jurisdictions. Therefore,
3684 the laws of the State of Florida cannot fully protect your
3685 purchase of an interest in this timeshare plan. Specifically,
3686 management and operational issues may need to be addressed in
3687 the jurisdiction in which the vessel is registered, which is
3688 (insert jurisdiction in which vessel is registered) . Concerns
3689 of purchasers may be sent to (insert name of applicable
3690 regulatory agency and address) .

3691
3692 4. Trust.--

3693 a. If the subject accommodations or facilities, or all use
3694 rights therein, are to be transferred into a trust in order to
3695 comply with this paragraph, such transfer shall take place
3696 pursuant to this subparagraph.

3697 b. Prior to the transfer by each interestholder of the
3698 subject accommodations and facilities, or all use rights

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3699 | therein, to a trust, any lien or other encumbrance against such
3700 | accommodations and facilities, or use rights therein, shall be
3701 | made subject to a nondisturbance and notice to creditors
3702 | instrument pursuant to subsection (3). No transfer pursuant to
3703 | this subparagraph shall become effective until the trustee
3704 | accepts such transfer and the responsibilities set forth herein.
3705 | A trust established pursuant to this subparagraph shall comply
3706 | with the following provisions:

3707 | (I) The trustee shall be an individual or a business
3708 | entity authorized and qualified to conduct trust business in
3709 | this state. Any corporation authorized to do business in this
3710 | state may act as trustee in connection with a timeshare plan
3711 | pursuant to this chapter. The trustee must be independent from
3712 | any developer or managing entity of the timeshare plan or any
3713 | interestholder of any accommodation or facility of such plan.

3714 | (II) The trust shall be irrevocable so long as any
3715 | purchaser has a right to occupy any portion of the timeshare
3716 | property pursuant to the timeshare plan.

3717 | (III) The trustee shall not convey, hypothecate, mortgage,
3718 | assign, lease, or otherwise transfer or encumber in any fashion
3719 | any interest in or portion of the timeshare property with
3720 | respect to which any purchaser has a right of use or occupancy
3721 | unless the timeshare plan is terminated pursuant to the
3722 | timeshare instrument, or such conveyance, hypothecation,
3723 | mortgage, assignment, lease, transfer, or encumbrance is
3724 | approved by a vote of two-thirds of all voting interests of the
3725 | timeshare plan and such decision is declared by a court of
3726 | competent jurisdiction to be in the best interests of the

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3727 purchasers of the timeshare plan. The trustee shall notify the
 3728 division in writing within 10 days after receiving notice of the
 3729 filing of any petition relating to obtaining such a court order.
 3730 The division shall have standing to advise the court of the
 3731 division's interpretation of the statute as it relates to the
 3732 petition.

3733 (IV) All purchasers of the timeshare plan or the owners'
 3734 association of the timeshare plan shall be the express
 3735 beneficiaries of the trust. The trustee shall act as a fiduciary
 3736 to the beneficiaries of the trust. The personal liability of the
 3737 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
 3738 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
 3739 shall set forth the duties of the trustee. The trustee shall be
 3740 required to furnish promptly to the division upon request a copy
 3741 of the complete list of the names and addresses of the owners in
 3742 the timeshare plan and a copy of any other books and records of
 3743 the timeshare plan required to be maintained pursuant to s.
 3744 721.13 that are in the possession, custody, or control of the
 3745 trustee. All expenses reasonably incurred by the trustee in the
 3746 performance of its duties, together with any reasonable
 3747 compensation of the trustee, shall be common expenses of the
 3748 timeshare plan.

3749 (V) The trustee shall not resign upon less than 90 days'
 3750 prior written notice to the managing entity and the division. No
 3751 resignation shall become effective until a substitute trustee,
 3752 approved by the division, is appointed by the managing entity
 3753 and accepts the appointment.

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3754 (VI) The documents establishing the trust arrangement
3755 shall constitute a part of the timeshare instrument.

3756 (VII) For trusts holding property in a timeshare plan
3757 located outside this state, the trust and trustee holding such
3758 property shall be deemed in compliance with the requirements of
3759 this subparagraph if such trust and trustee are authorized and
3760 qualified to conduct trust business under the laws of such
3761 jurisdiction and the agreement or law governing such trust
3762 arrangement provides substantially similar protections for the
3763 purchaser as are required in this subparagraph for trusts
3764 holding property in a timeshare plan in this state.

3765 (VIII) The trustee shall have appointed a registered agent
3766 in this state for service of process. In the event such a
3767 registered agent is not appointed, service of process may be
3768 served pursuant to s. 721.265.

3769 5. Owners' association.--

3770 a. If the subject accommodations or facilities, or all use
3771 rights therein, are to be transferred into an owners'
3772 association in order to comply with this paragraph, such
3773 transfer shall take place pursuant to this subparagraph.

3774 b. Prior to the transfer by each interestholder of the
3775 subject accommodations and facilities, or all use rights
3776 therein, to an owners' association, any lien or other
3777 encumbrance against such accommodations and facilities, or use
3778 rights therein, shall be made subject to a nondisturbance and
3779 notice to creditors instrument pursuant to subsection (3). No
3780 transfer pursuant to this subparagraph shall become effective
3781 until the owners' association accepts such transfer and the

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3782 | responsibilities set forth herein. An owners' association
3783 | established pursuant to this subparagraph shall comply with the
3784 | following provisions:

3785 | (I) The owners' association shall be a business entity
3786 | authorized and qualified to conduct business in this state.
3787 | Control of the board of directors of the owners' association
3788 | must be independent from any developer or managing entity of the
3789 | timeshare plan or any interestholder.

3790 | (II) The bylaws of the owners' association shall provide
3791 | that the corporation may not be voluntarily dissolved without
3792 | the unanimous vote of all owners of personal property timeshare
3793 | interests so long as any purchaser has a right to occupy any
3794 | portion of the timeshare property pursuant to the timeshare
3795 | plan.

3796 | (III) The owners' association shall not convey,
3797 | hypothecate, mortgage, assign, lease, or otherwise transfer or
3798 | encumber in any fashion any interest in or portion of the
3799 | timeshare property with respect to which any purchaser has a
3800 | right of use or occupancy, unless the timeshare plan is
3801 | terminated pursuant to the timeshare instrument, or unless such
3802 | conveyance, hypothecation, mortgage, assignment, lease,
3803 | transfer, or encumbrance is approved by a vote of two-thirds of
3804 | all voting interests of the association and such decision is
3805 | declared by a court of competent jurisdiction to be in the best
3806 | interests of the purchasers of the timeshare plan. The owners'
3807 | association shall notify the division in writing within 10 days
3808 | after receiving notice of the filing of any petition relating to
3809 | obtaining such a court order. The division shall have standing

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3810 to advise the court of the division's interpretation of the
3811 statute as it relates to the petition.

3812 (IV) All purchasers of the timeshare plan shall be members
3813 of the owners' association and shall be entitled to vote on
3814 matters requiring a vote of the owners' association as provided
3815 in this chapter or the timeshare instrument. The owners'
3816 association shall act as a fiduciary to the purchasers of the
3817 timeshare plan. The articles of incorporation establishing the
3818 owners' association shall set forth the duties of the owners'
3819 association. All expenses reasonably incurred by the owners'
3820 association in the performance of its duties, together with any
3821 reasonable compensation of the officers or directors of the
3822 owners' association, shall be common expenses of the timeshare
3823 plan.

3824 (V) The documents establishing the owners' association
3825 shall constitute a part of the timeshare instrument.

3826 (VI) For owners' associations holding property in a
3827 timeshare plan located outside this state, the owners'
3828 association holding such property shall be deemed in compliance
3829 with the requirements of this subparagraph if such owners'
3830 association is authorized and qualified to conduct owners'
3831 association business under the laws of such jurisdiction and the
3832 agreement or law governing such arrangement provides
3833 substantially similar protections for the purchaser as are
3834 required in this subparagraph for owners' associations holding
3835 property in a timeshare plan in this state.

3836 (VII) The owners' association shall have appointed a
3837 registered agent in this state for service of process. In the

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3838 event such a registered agent cannot be located, service of
3839 process may be made pursuant to s. 721.265.

3840 6. Personal property subject to certificate of title.--If
3841 any personal property that is an accommodation or facility of a
3842 timeshare plan is subject to a certificate of title in this
3843 state pursuant to chapter 319 or chapter 328, the following
3844 notation must be made on such certificate of title pursuant to
3845 s. 319.27(1) or s. 328.15(1):

3846

3847 The further transfer or encumbrance of the property subject to
3848 this certificate of title, or any lien or encumbrance thereon,
3849 is subject to the requirements of section 721.17, Florida
3850 Statutes, and the transferee or lienor agrees to be bound by all
3851 of the obligations set forth therein.

3852 7. If the developer has previously provided a certified
3853 copy of any document required by this paragraph, she or he may
3854 for all subsequent disbursements substitute a true and correct
3855 copy of the certified copy, provided no changes to the document
3856 have been made or are required to be made.

3857 8. In the event that use rights relating to an
3858 accommodation or facility are transferred into a trust pursuant
3859 to subparagraph 4. or into an owners' association pursuant to
3860 subparagraph 5., all other interestholders, including the owner
3861 of the underlying fee or underlying personal property, must
3862 execute a nondisturbance and notice to creditors instrument
3863 pursuant to subsection (3).

3864 Section 27. Paragraph (e) of subsection (1) of section
3865 721.53, Florida Statutes, is amended to read:

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3866 721.53 Subordination instruments; alternate security
3867 arrangements.--

3868 (1) With respect to each accommodation or facility of a
3869 multisite timeshare plan, the developer shall provide the
3870 division with satisfactory evidence that one of the following
3871 has occurred with respect to each interestholder prior to
3872 offering the accommodation or facility as a part of the
3873 multisite timeshare plan:

3874 (e) The interestholder has transferred the subject
3875 accommodation or facility or all use rights therein to a trust
3876 that complies with this paragraph. Prior to such transfer, any
3877 lien or other encumbrance against such accommodation or facility
3878 shall be made subject to a nondisturbance and notice to
3879 creditors instrument pursuant to paragraph (a) or a
3880 subordination and notice to creditors instrument pursuant to
3881 paragraph (b). No transfer pursuant to this paragraph shall
3882 become effective until the trust accepts such transfer and the
3883 responsibilities set forth herein. A trust established pursuant
3884 to this paragraph shall comply with the following provisions:

3885 1. The trustee shall be an individual or a business entity
3886 authorized and qualified to conduct trust business in this
3887 state. Any corporation authorized to do business in this state
3888 may act as trustee in connection with a timeshare plan pursuant
3889 to this chapter. The trustee must be independent from any
3890 developer or managing entity of the timeshare plan or any
3891 interestholder of any accommodation or facility of such plan.
3892 The same trustee may hold the accommodations and facilities, or

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3893 use rights therein, for one or more of the component sites of
3894 the timeshare plan.

3895 2. The trust shall be irrevocable so long as any purchaser
3896 has a right to occupy any portion of the timeshare property
3897 pursuant to the timeshare plan.

3898 3. The trustee shall not convey, hypothecate, mortgage,
3899 assign, lease, or otherwise transfer or encumber in any fashion
3900 any interests in or portion of the timeshare property with
3901 respect to which any purchaser has a right of use or occupancy
3902 unless the timeshare plan is terminated pursuant to the
3903 timeshare instrument, or the timeshare property held in trust is
3904 deleted from a multisite timeshare plan pursuant to s.

3905 721.552(3), or such conveyance, hypothecation, mortgage,
3906 assignment, lease, transfer, or encumbrance is approved by vote
3907 of two-thirds of all voting interests of the timeshare plan and
3908 such decision is declared by a court of competent jurisdiction
3909 to be in the best interests of the purchasers of the timeshare
3910 plan.

3911 4. All purchasers of the timeshare plan or the owners'
3912 association of the timeshare plan shall be express beneficiaries
3913 of the trust. The trustee shall act as a fiduciary to the
3914 beneficiaries of the trust. The personal liability of the
3915 trustee shall be governed by ss. 736.08125, 736.08163, 736.1013,
3916 and 736.1015 ~~s. 737.306~~. The agreement establishing the trust
3917 shall set forth the duties of the trustee. The trustee shall be
3918 required to furnish promptly to the division upon request a copy
3919 of the complete list of the names and addresses of the owners in
3920 the timeshare plan and a copy of any other books and records of

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3921 the timeshare plan required to be maintained pursuant to s.
3922 721.13 that are in the possession of the trustee. All expenses
3923 reasonably incurred by the trustee in the performance of its
3924 duties, together with any reasonable compensation of the
3925 trustee, shall be common expenses of the timeshare plan.

3926 5. The trustee shall not resign upon less than 90 days'
3927 prior written notice to the managing entity and the division. No
3928 resignation shall become effective until a substitute trustee,
3929 approved by the division, is appointed by the managing entity
3930 and accepts the appointment.

3931 6. The documents establishing the trust arrangement shall
3932 constitute a part of the timeshare instrument.

3933 7. For trusts holding property in component sites located
3934 outside this state, the trust holding such property shall be
3935 deemed in compliance with the requirements of this paragraph, if
3936 such trust is authorized and qualified to conduct trust business
3937 under the laws of such jurisdiction and the agreement or law
3938 governing such trust arrangement provides substantially similar
3939 protections for the purchaser as are required in this paragraph
3940 for trusts holding property in a component site located in this
3941 state.

3942 8. The trustee shall have appointed a registered agent in
3943 this state for service of process. In the event such a
3944 registered agent is not appointed, service of process may be
3945 served pursuant to s. 721.265.

3946 Section 28. Section 731.103, Florida Statutes, is amended
3947 to read:

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3948 731.103 Evidence as to death or status.--In proceedings
3949 under this code and under chapter 736, the ~~rules of evidence in~~
3950 ~~civil actions are applicable unless specifically changed by the~~
3951 ~~code.~~ The following additional rules relating to determination
3952 of death and status are applicable:

3953 (1) An authenticated copy of a death certificate issued by
3954 an official or agency of the place where the death purportedly
3955 occurred is prima facie proof of the fact, place, date, and time
3956 of death and the identity of the decedent.

3957 (2) A copy of any record or report of a governmental
3958 agency, domestic or foreign, that a person is alive, missing,
3959 detained, or, from the facts related, presumed dead is prima
3960 facie evidence of the status and of the dates, circumstances,
3961 and places disclosed by the record or report.

3962 (3) A person who is absent from the place of his or her
3963 last known domicile for a continuous period of 5 years and whose
3964 absence is not satisfactorily explained after diligent search
3965 and inquiry is presumed to be dead. The person's death is
3966 presumed to have occurred at the end of the period unless there
3967 is evidence establishing that death occurred earlier. Evidence
3968 showing that the absent person was exposed to a specific peril
3969 of death may be a sufficient basis for the court determining at
3970 any time after such exposure that he or she died less than 5
3971 years after the date on which his or her absence commenced. A
3972 petition for this determination shall be filed in the county in
3973 Florida where the decedent maintained his or her domicile or in
3974 any county of this state if the decedent was not a resident of
3975 Florida at the time his or her absence commenced.

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3976 (4) This section does not preclude the establishment of
 3977 death by direct or circumstantial evidence prior to expiration
 3978 of the 5-year time period set forth in subsection (3).

3979 Section 29. Section 731.1035, Florida Statutes, is created
 3980 to read:

3981 731.1035 Applicable rules of evidence.--In proceedings
 3982 under this code, the rules of evidence in civil actions are
 3983 applicable unless specifically changed by the code.

3984 Section 30. Section 731.201, Florida Statutes, is amended
 3985 to read:

3986 731.201 General definitions.--Subject to additional
 3987 definitions in subsequent chapters that are applicable to
 3988 specific chapters or parts, and unless the context otherwise
 3989 requires, in this code, in s. 409.9101, and in chapters 736 ~~737~~,
 3990 738, 739, and 744, the term:

3991 (1) "Authenticated," when referring to copies of documents
 3992 or judicial proceedings required to be filed with the court
 3993 under this code, means a certified copy or a copy authenticated
 3994 according to the Federal Rules of Civil Procedure.

3995 (2) "Beneficiary" means heir at law in an intestate estate
 3996 and devisee in a testate estate. The term "beneficiary" does not
 3997 apply to an heir at law or a devisee after that person's
 3998 interest in the estate has been satisfied. In the case of a
 3999 devise to an existing trust or trustee, or to a trust or trustee
 4000 described by will, the trustee is a beneficiary of the estate.
 4001 Except as otherwise provided in this subsection, the beneficiary
 4002 of the trust is not a beneficiary of the estate of which that
 4003 trust or the trustee of that trust is a beneficiary. However, if

4004 each trustee is also a personal representative of the estate,
 4005 each qualified beneficiary ~~the beneficiary or beneficiaries~~ of
 4006 the trust as defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be
 4007 regarded as a beneficiary of the estate.

4008 (3) "Child" includes a person entitled to take as a child
 4009 under this code by intestate succession from the parent whose
 4010 relationship is involved, and excludes any person who is only a
 4011 stepchild, a foster child, a grandchild, or a more remote
 4012 descendant.

4013 (4) "Claim" means a liability of the decedent, whether
 4014 arising in contract, tort, or otherwise, and funeral expense.
 4015 The term does not include an expense of administration or
 4016 estate, inheritance, succession, or other death taxes.

4017 (5) "Clerk" means the clerk or deputy clerk of the court.

4018 (6) "Court" means the circuit court.

4019 (7) "Curator" means a person appointed by the court to
 4020 take charge of the estate of a decedent until letters are
 4021 issued.

4022 (8) "Devise," when used as a noun, means a testamentary
 4023 disposition of real or personal property and, when used as a
 4024 verb, means to dispose of real or personal property by will or
 4025 trust. The term includes "gift," "give," "bequeath," "bequest,"
 4026 and "legacy." A devise is subject to charges for debts,
 4027 expenses, and taxes as provided in this code, the will, or the
 4028 trust.

4029 (9) "Devisee" means a person designated in a will or trust
 4030 to receive a devise. Except as otherwise provided in this
 4031 subsection, in the case of a devise to an existing trust or

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4032 trustee, or to a trust or trustee of a trust described by will,
4033 the trust or trustee, rather than the beneficiaries of the
4034 trust, is the devisee. However, if each trustee is also a
4035 personal representative of the estate, each qualified
4036 beneficiary ~~the beneficiary or beneficiaries~~ of the trust as
4037 defined in s. 736.0103(14) ~~737.303(4)(b)~~ shall be regarded as a
4038 devisee.

4039 (10) "Distributee" means a person who has received estate
4040 property from a personal representative or other fiduciary other
4041 than as a creditor or purchaser. A testamentary trustee is a
4042 distributee only to the extent of distributed assets or
4043 increments to them remaining in the trustee's hands. A
4044 beneficiary of a testamentary trust to whom the trustee has
4045 distributed property received from a personal representative is
4046 a distributee. For purposes of this provision, "testamentary
4047 trustee" includes a trustee to whom assets are transferred by
4048 will, to the extent of the devised assets.

4049 (11) "Domicile" means a person's usual place of dwelling
4050 and shall be synonymous with residence.

4051 (12) "Estate" means the property of a decedent that is the
4052 subject of administration.

4053 (13) "Exempt property" means the property of a decedent's
4054 estate which is described in s. 732.402.

4055 (14) "File" means to file with the court or clerk.

4056 (15) "Foreign personal representative" means a personal
4057 representative of another state or a foreign country.

4058 (16) "Formal notice" means formal notice under the Florida
4059 Probate Rules.

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4060 (17) "Grantor" means one who creates or adds to a trust
4061 and includes "settlor" or "trustor" and a testator who creates
4062 or adds to a trust.

4063 (18) "Heirs" or "heirs at law" means those persons,
4064 including the surviving spouse, who are entitled under the
4065 statutes of intestate succession to the property of a decedent.

4066 (19) "Incompetent" means a minor or a person adjudicated
4067 incompetent.

4068 (20) "Informal notice" or "notice" means informal notice
4069 under the Florida Probate Rules.

4070 (21) "Interested person" means any person who may
4071 reasonably be expected to be affected by the outcome of the
4072 particular proceeding involved. In any proceeding affecting the
4073 estate or the rights of a beneficiary in the estate, the
4074 personal representative of the estate shall be deemed to be an
4075 interested person. In any proceeding affecting the expenses of
4076 the administration and obligations of a decedent's estate, or
4077 any claims described in s. 733.702(1), the trustee of a trust
4078 described in s. 733.707(3) is an interested person in the
4079 administration of the grantor's estate. The term does not
4080 include a beneficiary who has received complete distribution.
4081 The meaning, as it relates to particular persons, may vary from
4082 time to time and must be determined according to the particular
4083 purpose of, and matter involved in, any proceedings.

4084 (22) "Letters" means authority granted by the court to the
4085 personal representative to act on behalf of the estate of the
4086 decedent and refers to what has been known as letters

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4087 | testamentary and letters of administration. All letters shall be
4088 | designated "letters of administration."

4089 | (23) "Other state" means any state of the United States
4090 | other than Florida and includes the District of Columbia, the
4091 | Commonwealth of Puerto Rico, and any territory or possession
4092 | subject to the legislative authority of the United States.

4093 | (24) "Parent" excludes any person who is only a
4094 | stepparent, foster parent, or grandparent.

4095 | (25) "Personal representative" means the fiduciary
4096 | appointed by the court to administer the estate and refers to
4097 | what has been known as an administrator, administrator cum
4098 | testamento annexo, administrator de bonis non, ancillary
4099 | administrator, ancillary executor, or executor.

4100 | (26) "Petition" means a written request to the court for
4101 | an order.

4102 | (27) "Power of appointment" means an authority, other than
4103 | as an incident of the beneficial ownership of property, to
4104 | designate recipients of beneficial interests in property.

4105 | ~~(28)-(27)~~ "Probate of will" means all steps necessary to
4106 | establish the validity of a will and to admit a will to probate.

4107 | ~~(29)-(28)~~ "Property" means both real and personal property
4108 | or any interest in it and anything that may be the subject of
4109 | ownership.

4110 | ~~(30)-(29)~~ "Protected homestead" means the property
4111 | described in s. 4(a)(1), Art. X of the State Constitution on
4112 | which at the death of the owner the exemption inures to the
4113 | owner's surviving spouse or heirs under s. 4(b), Art. X of the

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4114 State Constitution. For purposes of the code, real property
 4115 owned as tenants by the entirety is not protected homestead.
 4116 (31)~~(30)~~ "Residence" means a person's place of dwelling.
 4117 (32)~~(31)~~ "Residuary devise" means a devise of the assets
 4118 of the estate which remain after the provision for any devise
 4119 which is to be satisfied by reference to a specific property or
 4120 type of property, fund, sum, or statutory amount. If the will
 4121 contains no devise which is to be satisfied by reference to a
 4122 specific property or type of property, fund, sum, or statutory
 4123 amount, "residuary devise" or "residue" means a devise of all
 4124 assets remaining after satisfying the obligations of the estate.
 4125 (33)~~(32)~~ "Security" means a security as defined in s.
 4126 517.021.
 4127 (34)~~(33)~~ "Security interest" means a security interest as
 4128 defined in s. 671.201.
 4129 (35)~~(34)~~ "Trust" means an express trust, private or
 4130 charitable, with additions to it, wherever and however created.
 4131 It also includes a trust created or determined by a judgment or
 4132 decree under which the trust is to be administered in the manner
 4133 of an express trust. "Trust" excludes other constructive trusts,
 4134 and it excludes resulting trusts; conservatorships; custodial
 4135 arrangements pursuant to the Florida Uniform Transfers to Minors
 4136 Act; business trusts providing for certificates to be issued to
 4137 beneficiaries; common trust funds; land trusts under s. 689.05;
 4138 trusts created by the form of the account or by the deposit
 4139 agreement at a financial institution; voting trusts; security
 4140 arrangements; liquidation trusts; trusts for the primary purpose
 4141 of paying debts, dividends, interest, salaries, wages, profits,

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4142 pensions, or employee benefits of any kind; and any arrangement
4143 under which a person is nominee or escrowee for another.

4144 (36)~~(35)~~ "Trustee" includes an original, additional,
4145 surviving, or successor trustee, whether or not appointed or
4146 confirmed by court.

4147 (37)~~(36)~~ "Will" means an instrument, including a codicil,
4148 executed by a person in the manner prescribed by this code,
4149 which disposes of the person's property on or after his or her
4150 death and includes an instrument which merely appoints a
4151 personal representative or revokes or revises another will.

4152 Section 31. Paragraph (a) of subsection (1) and subsection
4153 (5) of section 731.303, Florida Statutes, are amended to read:

4154 731.303 Representation.--In the administration of or in
4155 judicial proceedings involving estates of decedents or trusts,
4156 the following apply:

4157 (1) Persons are bound by orders binding others in the
4158 following cases:

4159 (a)1. Orders binding the sole holder or all coholders of a
4160 power of revocation or a general, special, or limited power of
4161 appointment, including one in the form of a power of amendment
4162 or revocation to the extent that the power has not become
4163 unexercisable in fact, bind all persons to the extent that their
4164 interests, as persons who may take by virtue of the exercise or
4165 nonexercise of the power, are subject to the power.

4166 2. Subparagraph 1. does not apply to:

4167 a. Any matter determined by the court to involve fraud or
4168 bad faith by the trustee;

4169 b. A power of a trustee to distribute trust property; or

4170 c. A power of appointment held by a person while the
 4171 person is the sole trustee.

4172 (5) The holder of a power of appointment over property not
 4173 held in trust may represent and bind persons whose interests, as
 4174 permissible appointees, takers in default, or otherwise, are
 4175 subject to the power. Representation under this subsection does
 4176 not apply to:

4177 (a) Any matter determined by the court to involve fraud or
 4178 bad faith by the trustee;

4179 (b) A power of a trustee to distribute trust property; or

4180 (c) A power of appointment held by a person while the
 4181 person is the sole trustee ~~When a sole holder or coholder of a~~
 4182 ~~general, special, or limited power of appointment, including an~~
 4183 ~~exercisable power of amendment or revocation over property in an~~
 4184 ~~estate or trust, is bound by:~~

4185 ~~(a) Agreements, waivers, consents, or approvals; or~~

4186 ~~(b) Accounts, trust accountings, or other written reports~~
 4187 ~~that adequately disclose matters set forth therein,~~

4188
 4189 ~~then all persons who may take by virtue of, and whose interests~~
 4190 ~~are subject to, the exercise or nonexercise of the power are~~
 4191 ~~also bound, but only to the extent of their interests which~~
 4192 ~~could otherwise be affected by the exercise or nonexercise of~~
 4193 ~~the power.~~

4194 Section 32. Subsection (5) of section 732.2075, Florida
 4195 Statutes, is amended to read:

4196 732.2075 Sources from which elective share payable;
 4197 abatement.--

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4198 (5) Unless otherwise provided in the trust instrument or,
4199 in the decedent's will if there is no provision in the trust
4200 instrument, any amount to be satisfied from trust property shall
4201 be paid from the assets of the trust in the order provided for
4202 claims under s. 736.05053 ~~737.3054~~(2) and (3). A direction in
4203 the decedent's will is effective only for revocable trusts.

4204 Section 33. Subsection (2) of section 732.513, Florida
4205 Statutes, is amended to read:

4206 732.513 Devises to trustee.--

4207 (2) The devise shall not be invalid for any or all of the
4208 following reasons:

4209 (a) Because the trust is amendable or revocable, or both,
4210 by any person.

4211 (b) Because the trust has been amended or revoked in part
4212 after execution of the will or a codicil to it.

4213 ~~(c) Because the trust instrument or any amendment to it~~
4214 ~~was not executed in the manner required for wills.~~

4215 (d)~~(e)~~ Because the only res of the trust is the possible
4216 expectancy of receiving, as a named beneficiary, a devise under
4217 a will or death benefits as described in s. 733.808, and even
4218 though the testator or other person has reserved any or all
4219 rights of ownership in the death benefit policy, contract, or
4220 plan, including the right to change the beneficiary.

4221 (d)~~(e)~~ Because of any of the provisions of s. 689.075.

4222 Section 34. Section 732.603, Florida Statutes, is amended
4223 to read:

4224 (Substantial rewording of section. See
4225 s. 732.603, F.S., for present text.)

4226 732.603 Antilapse; deceased devisee; class gifts.--
 4227 (1) Unless a contrary intent appears in the will, if a
 4228 devisee who is a grandparent, or a descendant of a grandparent,
 4229 of the testator:
 4230 (a) Is dead at the time of the execution of the will;
 4231 (b) Fails to survive the testator; or
 4232 (c) Is required by the will or by operation of law to be
 4233 treated as having predeceased the testator,
 4234
 4235 a substitute gift is created in the devisee's surviving
 4236 descendants who take per stirpes the property to which the
 4237 devisee would have been entitled had the devisee survived the
 4238 testator.
 4239 (2) When a power of appointment is exercised by will,
 4240 unless a contrary intent appears in the document creating the
 4241 power of appointment or in the testator's will, if an appointee
 4242 who is a grandparent, or a descendant of a grandparent, of the
 4243 donor of the power:
 4244 (a) Is dead at the time of the execution of the will or
 4245 the creation of the power;
 4246 (b) Fails to survive the testator; or
 4247 (c) Is required by the will, the document creating the
 4248 power, or by operation of law to be treated as having
 4249 predeceased the testator,
 4250
 4251 a substitute gift is created in the appointee's surviving
 4252 descendants who take per stirpes the property to which the
 4253 appointee would have been entitled had the appointee survived

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4254 the testator. Unless the language creating a power of
4255 appointment expressly excludes the substitution of the
4256 descendants of an object of a power for the object, a surviving
4257 descendant of a deceased object of a power of appointment may be
4258 substituted for the object whether or not the descendant is an
4259 object of the power.

4260 (3) In the application of this section:

4261 (a) Words of survivorship in a devise or appointment to an
4262 individual, such as "if he survives me," or to "my surviving
4263 children," are a sufficient indication of an intent contrary to
4264 the application of subsections (1) and (2). Words of
4265 survivorship used by the donor of the power in a power to
4266 appoint to an individual, such as the term "if he survives the
4267 donee," or in a power to appoint to the donee's "then surviving
4268 children," are a sufficient indication of an intent contrary to
4269 the application of subsection (2).

4270 (b) The term:

4271 1. "Appointment" includes an alternative appointment and
4272 an appointment in the form of a class gift.

4273 2. "Appointee" includes:

4274 a. A class member if the appointment is in the form of a
4275 class gift.

4276 b. An individual or class member who was deceased at the
4277 time the testator executed his or her will as well as an
4278 individual or class member who was then living but who failed to
4279 survive the testator.

4280 3. "Devise" also includes an alternative devise and a
4281 devise in the form of a class gift.

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- 4282 4. "Devisee" also includes:
 4283 a. A class member if the devise is in the form of a class
 4284 gift.
 4285 b. An individual or class member who was deceased at the
 4286 time the testator executed his or her will as well as an
 4287 individual or class member who was then living but who failed to
 4288 survive the testator.

4289 (4) This section applies only to outright devises and
 4290 appointments. Devises and appointments in trust, including to a
 4291 testamentary trust, are subject to s. 736.1106.

4292 Section 35. Section 732.604, Florida Statutes, is amended
 4293 to read:

4294 732.604 Failure of testamentary provision.--

4295 (1) Except as provided in s. 732.603, if a devise other
 4296 than a residuary devise fails for any reason, it becomes a part
 4297 of the residue.

4298 (2) Except as provided in s. 732.603, if the residue is
 4299 devised to two or more persons, the share of a residuary devisee
 4300 that fails for any reason ~~and the devise to one of the residuary~~
 4301 ~~devisees fails for any reason, that devise passes to the other~~
 4302 residuary devisee, or to the other residuary devisees in
 4303 proportion to the ~~their~~ interests of each in the remaining part
 4304 of the residue.

4305 Section 36. Section 732.611, Florida Statutes, is amended
 4306 to read:

4307 732.611 Devises to multi-generation classes to be per
 4308 stirpes.--Unless the will provides otherwise, all devises to

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4309 | descendants, issue, and other multi-generation classes shall be
4310 | per stirpes.

4311 | Section 37. Subsection (1) of section 733.212, Florida
4312 | Statutes, is amended to read:

4313 | 733.212 Notice of administration; filing of objections.--

4314 | (1) The personal representative shall promptly serve a
4315 | copy of the notice of administration on the following persons
4316 | who are known to the personal representative:

4317 | (a) The decedent's surviving spouse;

4318 | (b) Beneficiaries;

4319 | (c) The trustee of any trust described in s. 733.707(3)
4320 | and each qualified beneficiary of the trust as defined in s.
4321 | 736.0103(14) ~~737.303(4)(b)~~, if each trustee is also a personal
4322 | representative of the estate; and

4323 | (d) Persons who may be entitled to exempt property

4324 |
4325 | in the manner provided for service of formal notice, unless
4326 | served under s. 733.2123. The personal representative may
4327 | similarly serve a copy of the notice on any devisees under a
4328 | known prior will or heirs or others who claim or may claim an
4329 | interest in the estate.

4330 | Section 38. Subsection (1) of section 733.602, Florida
4331 | Statutes, is amended to read:

4332 | 733.602 General duties.--

4333 | (1) A personal representative is a fiduciary who shall
4334 | observe the standards of care applicable to trustees as
4335 | described by part VII of chapter 736 ~~s. 737.302~~. A personal
4336 | representative is under a duty to settle and distribute the

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4337 | estate of the decedent in accordance with the terms of the
 4338 | decedent's will and this code as expeditiously and efficiently
 4339 | as is consistent with the best interests of the estate. A
 4340 | personal representative shall use the authority conferred by
 4341 | this code, the authority in the will, if any, and the authority
 4342 | of any order of the court, for the best interests of interested
 4343 | persons, including creditors.

4344 | Section 39. Subsection (4) of section 733.805, Florida
 4345 | Statutes, is amended to read:

4346 | 733.805 Order in which assets abate.--

4347 | (4) In determining the contribution required under s.
 4348 | 733.607(2), subsections (1)-(3) of this section and s. 736.05053
 4349 | ~~737.3054~~(2) shall be applied as if the beneficiaries of the
 4350 | estate and the beneficiaries of a trust described in s.
 4351 | 733.707(3), other than the estate or trust itself, were taking
 4352 | under a common instrument.

4353 | Section 40. Paragraph (j) of subsection (1) of section
 4354 | 733.817, Florida Statutes, is amended to read:

4355 | 733.817 Apportionment of estate taxes.--

4356 | (1) For purposes of this section:

4357 | (j) "Residuary devise" has the meaning set forth in s.
 4358 | ~~731.201(31)~~.

4359 | Section 41. Paragraphs (a) and (f) of subsection (8) and
 4360 | paragraphs (a) and (d) of subsection (9) of section 738.104,
 4361 | Florida Statutes, are amended to read:

4362 | 738.104 Trustee's power to adjust.--

4363 | (8) With respect to a trust in existence on January 1,
 4364 | 2003:

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4365 (a) A trustee shall not have the power to adjust under
4366 this section until the statement required in subsection (9) is
4367 provided and either no objection is made or any objection which
4368 is made has been terminated.

4369 1. An objection is made if, within 60 days after the date
4370 of the statement required in subsection (9), a super majority of
4371 the eligible ~~trust~~ beneficiaries deliver to the trustee a
4372 written objection to the application of this section to such
4373 trust. An objection shall be deemed to be delivered to the
4374 trustee on the date the objection is mailed to the mailing
4375 address listed in the notice provided in subsection (9).

4376 2. An objection is terminated upon the earlier of the
4377 receipt of consent from a super majority of eligible ~~trust~~
4378 beneficiaries of the class that made the objection, or the
4379 resolution of the objection pursuant to paragraph (c).

4380 (f) The objection of a super majority of eligible
4381 beneficiaries under this subsection shall be valid for a period
4382 of 1 year after the date of the notice set forth in subsection
4383 (9). Upon expiration of the objection, the trustee may
4384 thereafter give a new notice under subsection (9).

4385 (9) (a) A trustee of a trust in existence on January 1,
4386 2003, that is not prohibited under subsection (3) from
4387 exercising the power to adjust shall, any time prior to
4388 initially exercising the power, provide to all eligible
4389 ~~reasonably ascertainable current~~ beneficiaries ~~described in s.~~
4390 ~~737.303(4)(b)1. and all reasonably ascertainable remainder~~
4391 ~~beneficiaries described in s. 737.303(4)(b)2.~~ a statement
4392 containing the following:

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4393 | 1. The name, telephone number, street address, and mailing
4394 | address of the trustee and of any individuals who may be
4395 | contacted for further information;

4396 | 2. A statement that unless a super majority of the
4397 | eligible beneficiaries objects to the application of this
4398 | section to the trust within 60 days after the date the statement
4399 | pursuant to this subsection was served, s. 738.104 shall apply
4400 | to the trust; and

4401 | 3. A statement that, if s. 738.104 applies to the trust,
4402 | the trustee will have the power to adjust between income and
4403 | principal and that such a power may have an effect on the
4404 | distributions to such beneficiary from the trust.

4405 | (d) For purposes of subsection (8) and this subsection,
4406 | the term:

4407 | 1. "Eligible beneficiaries" means:

4408 | a. If at the time the determination is made there is one
4409 | or more beneficiaries described in s. 736.0103(14)(c), the
4410 | beneficiaries described in s. 736.0103(14)(a) and (c); or

4411 | b. If there is no beneficiary described in s.
4412 | 736.0103(14)(c), the beneficiaries described in s.
4413 | 736.0103(14)(a) and (b).

4414 | 2. A "Super majority of the eligible ~~trust~~ beneficiaries"
4415 | means:

4416 | a. If at the time the determination is made there is one
4417 | or more beneficiaries described in s. 736.0103(14)(c), at least
4418 | two-thirds in interest of the ~~reasonably ascertainable current~~
4419 | beneficiaries described in s. 736.0103(14)(a) ~~737.303(4)(b)1.~~ or
4420 | two-thirds in interest of the ~~reasonably ascertainable remainder~~

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4421 beneficiaries described in s. 736.0103(14)(c) ~~737.303(4)(b)2.~~,
 4422 if the interests of the beneficiaries are reasonably
 4423 ascertainable; otherwise, it means two-thirds in number of
 4424 either such class; or

4425 b. If there is no beneficiary described in s.
 4426 736.0103(14)(c), at least two-thirds in interest of the
 4427 beneficiaries described in s. 736.0103(14)(a) or two-thirds in
 4428 interest of the beneficiaries described in s. 736.0103(14)(b),
 4429 if the interests of the beneficiaries are reasonably
 4430 ascertainable, otherwise, two-thirds in number of either such
 4431 class.

4432 Section 42. Subsection (4) of section 738.1041, Florida
 4433 Statutes, is amended to read:

4434 738.1041 Total return unitrust.--

4435 (4) All determinations made pursuant to sub-subparagraph
 4436 (2)(b)2.b. shall be conclusive if reasonable and made in good
 4437 faith. Such determination shall be conclusively presumed to have
 4438 been made reasonably and in good faith unless proven otherwise
 4439 in a proceeding commenced by or on behalf of a person interested
 4440 in the trust within the time provided in s. 736.1008 ~~737.307~~.
 4441 The burden will be on the objecting interested party to prove
 4442 that the determinations were not made reasonably and in good
 4443 faith.

4444 Section 43. Subsection (5) of section 738.202, Florida
 4445 Statutes, is amended to read:

4446 738.202 Distribution to residuary and remainder
 4447 beneficiaries.--

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4448 (5) The value of trust assets shall be determined on an
 4449 asset-by-asset basis and shall be conclusive if reasonable and
 4450 determined in good faith. Determinations based on appraisals
 4451 performed within 2 years before or after the valuation date
 4452 shall be presumed reasonable. The value of trust assets shall be
 4453 conclusively presumed to be reasonable and determined in good
 4454 faith unless proven otherwise in a proceeding commenced by or on
 4455 behalf of a person interested in the trust within the time
 4456 provided in s. 736.1008 ~~737.307~~.

4457 Section 44. Paragraph (a) of subsection (12) of section
 4458 739.102, Florida Statutes, is amended to read:

4459 739.102 Definitions.--As used in this chapter, the term:

4460 (12) "Trust" means:

4461 (a) An express trust (including an honorary trust or a
 4462 trust under s. 736.0408 ~~737.116~~), charitable or noncharitable,
 4463 with additions thereto, whenever and however created; and
 4464

4465 As used in this chapter, the term "trust" does not include a
 4466 constructive trust or a resulting trust.

4467 Section 45. Paragraphs (b) and (f) of subsection (6) of
 4468 section 744.331, Florida Statutes, are amended to read:

4469 744.331 Procedures to determine incapacity.--

4470 (6) ORDER DETERMINING INCAPACITY.--If, after making
 4471 findings of fact on the basis of clear and convincing evidence,
 4472 the court finds that a person is incapacitated with respect to
 4473 the exercise of a particular right, or all rights, the court
 4474 shall enter a written order determining such incapacity. A

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4475 person is determined to be incapacitated only with respect to
4476 those rights specified in the order.

4477 (b) When an order determines that a person is incapable of
4478 exercising delegable rights, the court must consider and find
4479 whether there is an alternative to guardianship which will
4480 sufficiently address the problems of the incapacitated person. A
4481 guardian must be appointed to exercise the incapacitated
4482 person's delegable rights unless the court finds there is an
4483 alternative. A guardian may not be appointed if the court finds
4484 there is an alternative to guardianship which will sufficiently
4485 address the problems of the incapacitated person. ~~In any order~~
4486 ~~declaring a person incapacitated the court must find that~~
4487 ~~alternatives to guardianship were considered and that no~~
4488 ~~alternative to guardianship will sufficiently address the~~
4489 ~~problems of the ward.~~

4490 (f) Upon the filing of a verified statement by an
4491 interested person stating:

4492 1. That he or she has a good faith belief that the alleged
4493 incapacitated person's trust, trust amendment, or durable power
4494 of attorney is invalid; and

4495 2. A reasonable factual basis for that belief,
4496
4497 the trust, trust amendment, or durable power of attorney shall
4498 not be deemed to be an alternative to the appointment of a
4499 guardian. The appointment of a guardian does not limit the
4500 court's power to determine that certain authority granted by a
4501 durable power of attorney is to remain exercisable by the
4502 attorney in fact. ~~When an order is entered which determines that~~

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4503 ~~a person is incapable of exercising delegable rights, a guardian~~
 4504 ~~must be appointed to exercise those rights.~~

4505 Section 46. Paragraph (a) of subsection (6) of section
 4506 744.361, Florida Statutes, is amended to read:

4507 744.361 Powers and duties of guardian.--

4508 (6) A guardian who is given authority over any property of
 4509 the ward shall:

4510 (a) Protect and preserve the property and invest it
 4511 prudently as provided in chapter 518 ~~defined in s. 737.302,~~
 4512 apply it as provided in s. 744.397, and account for it
 4513 faithfully.

4514 Section 47. Subsections (11) and (18) of section 744.441,
 4515 Florida Statutes, are amended to read:

4516 744.441 Powers of guardian upon court approval.--After
 4517 obtaining approval of the court pursuant to a petition for
 4518 authorization to act, a plenary guardian of the property, or a
 4519 limited guardian of the property within the powers granted by
 4520 the order appointing the guardian or an approved annual or
 4521 amended guardianship report, may:

4522 (11) Prosecute or defend claims or proceedings in any
 4523 jurisdiction for the protection of the estate and of the
 4524 guardian in the performance of his or her duties. Before
 4525 authorizing a guardian to bring an action described in s.
 4526 736.0207, the court shall first find that the action appears to
 4527 be in the ward's best interests during the ward's probable
 4528 lifetime. If the court denies a request that a guardian be
 4529 authorized to bring an action described in s. 736.0207, the

4530 | court shall review the continued need for a guardian and the
 4531 | extent of the need for delegation of the ward's rights.

4532 | (18) When the ward's will evinces an objective to obtain a
 4533 | United States estate tax charitable deduction by use of a split
 4534 | interest trust (as that term is defined in s. 736.1201 ~~737.501~~),
 4535 | but the maximum charitable deduction otherwise allowable will
 4536 | not be achieved in whole or in part, execute a codicil on the
 4537 | ward's behalf amending said will to obtain the maximum
 4538 | charitable deduction allowable without diminishing the aggregate
 4539 | value of the benefits of any beneficiary under such will.

4540 | Section 48. Section 744.462, Florida Statutes, is created
 4541 | to read:

4542 | 744.462 Determination regarding alternatives to
 4543 | guardianship.--Any judicial determination concerning the
 4544 | validity of the ward's durable power of attorney, trust, or
 4545 | trust amendment shall be promptly reported in the guardianship
 4546 | proceeding by the guardian of the property. If the instrument
 4547 | has been judicially determined to be valid or if, after the
 4548 | appointment of a guardian, a petition is filed alleging that
 4549 | there is an alternative to guardianship which will sufficiently
 4550 | address the problems of the ward, the court shall review the
 4551 | continued need for a guardian and the extent of the need for
 4552 | delegation of the ward's rights.

4553 | Section 49. Sections 737.101, 737.105, 737.106, 737.111,
 4554 | 737.115, 737.116, 737.201, 737.202, 737.203, 737.2035, 737.204,
 4555 | 737.2041, 737.205, 737.206, 737.2065, 737.207, 737.208, 737.209,
 4556 | 737.301, 737.302, 737.303, 737.3035, 737.304, 737.305, 737.3053,
 4557 | 737.3054, 737.3055, 737.306, 737.3061, 737.307, 737.308,

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4558 | 737.309, 737.401, 737.402, 737.4025, 737.403, 737.4031,
 4559 | 737.4032, 737.4033, 737.404, 737.405, 737.406, 737.501, 737.502,
 4560 | 737.503, 737.504, 737.505, 737.506, 737.507, 737.508, 737.509,
 4561 | 737.510, 737.511, 737.512, 737.6035, 737.621, 737.622, 737.623,
 4562 | 737.624, 737.625, 737.626, and 737.627, Florida Statutes, are
 4563 | repealed.

4564 | Section 50. This act shall take effect July 1, 2007.