

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

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Section 689.071, Florida Statutes, is amended
 22 to read:

23 689.071 Florida Land Trust Act ~~trusts transferring~~
 24 ~~interests in real estate; ownership vests in trustee.--~~

25 (1) SHORT TITLE.--This section may be cited as the
 26 "Florida Land Trust Act."

27 (2) DEFINITIONS.--As used in this section, the term:

28 (a) "Beneficial interest" means any interest, vested or

29 contingent and regardless of how small or minimal such interest
 30 may be, in a land trust which is held by a beneficiary.

31 (b) "Beneficiary" means any person or entity having a
 32 beneficial interest in a land trust. A trustee may be a
 33 beneficiary of the land trust for which such trustee serves as
 34 trustee.

35 (c) "Holder of the power of direction" means any person or
 36 entity having the authority to direct the trustee to convey
 37 property or interests, execute a mortgage, distribute proceeds
 38 of a sale or financing, and execute documents incidental to the
 39 administration of a land trust.

40 (d) "Land trust" is not the creation of an entity, but
 41 means any express written agreement or arrangement by which a
 42 use, confidence, or trust is declared of any land, or of any
 43 charge upon land, for the use or benefit of any beneficiary,
 44 under which the title to real property, both legal and
 45 equitable, is held by a trustee, subject only to the execution
 46 of the trust, which may be enforced by the beneficiaries.

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

50 (3)~~(1)~~ OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
 51 deed, mortgage, lease assignment, or other instrument heretofore
 52 or hereafter made, hereinafter referred to as "the recorded
 53 instrument," transferring any interest in real property in this
 54 state, including, but not limited to, a leasehold or mortgagee
 55 interest, to any person or any, corporation, bank, trust
 56 company, or other entity duly formed under the laws of its state

57 ~~of qualification qualified to act as a fiduciary in this state,~~
 58 in which recorded instrument the person, corporation, bank,
 59 trust company, or other entity is designated "trustee," or "as
 60 trustee," without therein naming the beneficiaries of such
 61 trust, whether or not reference is made in the recorded
 62 instrument to any separate collateral unrecorded declarations or
 63 agreements, is effective to vest, and is hereby declared to have
 64 vested, in such trustee full rights of ownership over the real
 65 property or interest therein, with full power and authority as
 66 granted and provided in the recorded instrument to deal in and
 67 with the property or interest therein or any part thereof;
 68 provided, the recorded instrument confers on the trustee the
 69 power and authority either to protect, conserve and to sell, or
 70 to lease, or to encumber, or otherwise to manage and dispose of
 71 the real property described in the recorded instrument.

72 (4)-(2) NO DUTY TO INQUIRE.--Any grantee, mortgagee,
 73 lessee, transferee, assignee, or person obtaining satisfactions
 74 or releases or otherwise in any way dealing with the trustee
 75 with respect to the real property or any interest in such
 76 property ~~properties~~ held in trust under the recorded instrument,
 77 as hereinabove provided for, is not obligated to inquire into
 78 the identification or status of any named or unnamed
 79 beneficiaries, or their heirs or assigns to whom a trustee may
 80 be accountable under the terms of the recorded instrument, or
 81 under any unrecorded separate declarations or agreements
 82 collateral to the recorded instrument, whether or not such
 83 declarations or agreements are referred to therein; or to
 84 inquire into or ascertain the authority of such trustee to act

HB 7099

2006

85 within and exercise the powers granted under the recorded
86 instrument; or to inquire into the adequacy or disposition of
87 any consideration, if any is paid or delivered to such trustee
88 in connection with any interest so acquired from such trustee;
89 or to inquire into any of the provisions of any such unrecorded
90 declarations or agreements.

91 (5)~~(3)~~ BENEFICIARY CLAIMS.--All persons dealing with the
92 trustee under the recorded instrument as hereinabove provided
93 take any interest transferred by the trustee thereunder, within
94 the power and authority as granted and provided therein, free
95 and clear of the claims of all the named or unnamed
96 beneficiaries of such trust, and of any unrecorded declarations
97 or agreements collateral thereto whether referred to in the
98 recorded instrument or not, and of anyone claiming by, through,
99 or under such beneficiaries. However, this section does not
100 prevent including, and without limiting the foregoing to, any
101 claim arising out of any dower or curtesy interest of the spouse
102 of any beneficiary thereof; provided, nothing herein contained
103 prevents a beneficiary of any such unrecorded collateral
104 declarations or agreements from enforcing the terms thereof
105 against the trustee.

106 (6)~~(4)~~ PERSONAL PROPERTY.--In all cases in which the
107 recorded instrument, as hereinabove provided, contains a
108 provision defining and declaring the interests of beneficiaries
109 thereunder to be personal property only, such provision shall be
110 controlling for all purposes when such determination becomes an
111 issue under the laws or in the courts of this state.

112 (7) ~~(5)~~ TRUSTEE LIABILITY.--In addition to any other
 113 limitation on personal liability existing pursuant to statute or
 114 otherwise, the provisions of s. 737.306 apply to the trustee of
 115 a land trust created pursuant to this section.

116 (8) LAND TRUST BENEFICIARIES.--

117 (a) Except as provided in this section, the beneficiaries
 118 of a land trust are not liable, solely by being a beneficiary,
 119 under a judgment, decree, or order of court or in any other
 120 manner for a debt, obligation, or liability of the land trust.

121 (b) Any beneficiary acting under the trust agreement of a
 122 land trust is not liable to the land trust's trustee or to any
 123 other beneficiary for the beneficiary's good faith reliance on
 124 the provisions of the trust agreement.

125 (c) Chapter 679 applies to the perfection of any security
 126 interest in a beneficial interest in a land trust. The
 127 perfection of a security interest in a beneficial interest in a
 128 land trust does not impair or diminish the authority of the
 129 trustee under the recorded instrument, and parties dealing with
 130 the trustee are not required to inquire into the terms of the
 131 unrecorded trust agreement.

132 (d) A beneficiary's duties and liabilities may be expanded
 133 or restricted in a trust agreement or beneficiary agreement.

134 (e) Any subsequent document appearing of record in which a
 135 beneficiary of a trust transfers or encumbers the beneficial
 136 interest in the trust does not diminish or impair the authority
 137 of the trustee under the terms of the recorded instrument.
 138 Parties dealing with the trustee are not required to inquire
 139 into the terms of the unrecorded trust agreement.

140 (f) An unrecorded trust agreement giving rise to a
141 recorded instrument for a land trust may provide that one or
142 more persons or entities have the power to direct the trustee to
143 convey property or interests, execute a mortgage, distribute
144 proceeds of a sale or financing, and execute documents
145 incidental to administration of the land trust. The power of
146 direction, unless provided otherwise in the land trust
147 agreement, is conferred upon the holders of the power for the
148 use and benefit of all holders of any beneficial interest in the
149 land trust. In the absence of a provision in the land trust
150 agreement to the contrary, the power of direction shall be in
151 accordance with the percentage of individual ownership. In
152 exercising the power of direction, the holders of the power of
153 direction are presumed to act in a fiduciary capacity for the
154 benefit of all holders of any beneficial interest in the trust,
155 unless otherwise provided in the land trust agreement. A
156 beneficial interest is indefeasible, and the power of direction
157 may not be exercised so as to alter, amend, revoke, terminate,
158 defeat, or otherwise affect or change the enjoyment of any
159 beneficial interest.

160 (g) A trust relating to real estate does not fail, and any
161 use relating to real estate may not be defeated, because
162 beneficiaries are not specified by name in the recorded deed of
163 conveyance to the trustee or because duties are not imposed upon
164 the trustee. The power conferred by any recorded deed of
165 conveyance on a trustee to sell, lease, encumber, or otherwise
166 dispose of property described in the deed is effective, and a
167 person dealing with the trustee is not required to inquire any

168 further into the right of the trustee to act or the disposition
 169 of any proceeds.

170 (h) The principal residence of a beneficiary may be
 171 entitled to the homestead tax exemption even if the homestead is
 172 held by a trustee in a land trust.

173 (9) SUCCESSOR TRUSTEE.--

174 (a) The provisions of s. 737.309 relating to the
 175 resignation of a trustee do not apply to the appointment of a
 176 successor trustee under this section.

177 (b) If the recorded instrument and the unrecorded land
 178 trust agreement are silent as to the appointment of a successor
 179 trustee in the event of the death, incapacity, resignation, or
 180 termination due to dissolution of a land trustee or if a land
 181 trustee is unable to serve as trustee, one or more persons or
 182 entities having the power of direction of the land trust
 183 agreement may appoint a successor trustee or trustees of the
 184 land trust by filing a declaration of appointment of a successor
 185 trustee or trustees in the office of the recorder of deeds in
 186 the county in which the trust property is located. The
 187 declaration must be signed by a beneficiary or beneficiaries of
 188 the trust and by each successor trustee, must be acknowledged in
 189 the manner provided for acknowledgment of deeds, and must
 190 contain:

- 191 1. The legal description of the trust property.
- 192 2. The name and address of the former trustee.
- 193 3. The name and address of each successor trustee.
- 194 4. A statement that each successor trustee has been
 195 appointed by one or more persons or entities having the power of

196 direction of the land trust, together with an acceptance of
 197 appointment by each successor trustee.

198 (c) If the recorded instrument is silent as to the
 199 appointment of a successor trustee or trustees but an unrecorded
 200 land trust agreement provides for the appointment of a successor
 201 trustee or trustees in the event of the death, incapacity,
 202 resignation, or termination due to dissolution of the land
 203 trustee, upon the appointment of any successor trustee pursuant
 204 to the terms of the unrecorded land trust agreement, each
 205 successor trustee shall file a declaration of appointment of a
 206 successor trustee in the office of the recorder of deeds in the
 207 county in which the trust property is located. The declaration
 208 must be signed by both the former trustee and each successor
 209 trustee, must be acknowledged in the manner provided for
 210 acknowledgment of deeds, and must contain:

- 211 1. The legal description of the trust property.
- 212 2. The name and address of the former trustee.
- 213 3. The name and address of the successor trustee.
- 214 4. A statement of resignation by the former trustee and a
 215 statement of acceptance of appointment by each successor
 216 trustee.
- 217 5. A statement that each successor trustee was duly
 218 appointed under the terms of the unrecorded land trust
 219 agreement.

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 221 If the appointment of any successor trustee is due to the death
 222 or incapacity of the former trustee, the declaration need not be
 223 signed by the former trustee and a copy of the death certificate

HB 7099

2006

224 or a statement that the former trustee is incapacitated or
225 unable to serve must be attached to or included in the
226 declaration, as applicable.

227 (d) If the recorded instrument provides for the
228 appointment of any successor trustee and any successor trustee
229 is appointed in accordance with the recorded instrument, no
230 additional declarations of appointment of any successor trustee
231 are required under this section.

232 (e) Each successor land trustee appointed is fully vested
233 with all the estate, properties, rights, powers, trusts, duties,
234 and obligations of the predecessor land trustee, except that any
235 successor land trustee is not under any duty to inquire into the
236 acts or omissions of a predecessor trustee and is not liable for
237 any act or failure to act of a predecessor trustee. A person
238 dealing with any successor trustee pursuant to a declaration
239 filed under this section is not obligated to inquire into or
240 ascertain the authority of the successor trustee to act within
241 or exercise the powers granted under the recorded instruments or
242 any unrecorded declarations or agreements.

243 (f) A land trust agreement may provide that the trustee,
244 when directed to do so by the beneficiaries of the land trust or
245 legal representatives of the beneficiaries, may convey the trust
246 property directly to another trustee on behalf of the
247 beneficiaries or others named by the beneficiaries.

248 (10) TRUSTEE AS CREDITOR.--

249 (a) If a debt is secured by a security interest in a
250 beneficial interest in a land trust or by a mortgage on land
251 trust property, the validity or enforceability of the debt,

252 security interest, or mortgage and the rights, remedies, powers,
 253 and duties of the creditor with respect to the debt or the
 254 security are not affected by the fact that the creditor and the
 255 trustee are the same person or entity, and the creditor may
 256 extend credit, obtain any necessary security interest or
 257 mortgage, and acquire and deal with the property comprising the
 258 security as though the creditor were not the trustee.

259 (b) A trustee of a land trust does not breach a fiduciary
 260 duty to the beneficiaries, and it is not evidence of a breach of
 261 any fiduciary duty owed by the trustee to the beneficiaries for
 262 a trustee to be or become a secured or unsecured creditor of the
 263 land trust, the beneficiary of the land trust, or a third party
 264 whose debt to such creditor is guaranteed by a beneficiary of
 265 the land trust.

266 (11)(6) REMEDIAL ACT.--This act is remedial in nature and
 267 shall be given a liberal interpretation to effectuate the intent
 268 and purposes hereinabove expressed.

269 (12)(7) EXCLUSION.--This act does not apply to any deed,
 270 mortgage, or other instrument to which s. 689.07 applies.

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

273 201.02 Tax on deeds and other instruments relating to real
 274 property or interests in real property.--

275 (4) The tax imposed by subsection (1) shall also be
 276 payable upon documents which convey or transfer, pursuant to s.
 277 689.071, any beneficial interest in lands, tenements, or other
 278 real property, or any interest therein, even though such
 279 interest may be designated as personal property, notwithstanding

HB 7099

2006

280 the provisions of s. 689.071(6)~~(4)~~. The tax shall be paid upon
281 execution of any such document.

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

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