

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

22
23 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

(a) "Beneficial interest" means any interest, vested or contingent and regardless of how small or minimal such interest may be, in a land trust which is held by a beneficiary.

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

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

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

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

54 (3)-(1) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
 55 deed, mortgage, lease assignment, or other instrument heretofore
 56 or hereafter made, hereinafter referred to as "the recorded
 57 instrument," transferring any interest in real property in this
 58 state, including, but not limited to, a leasehold or mortgagee
 59 interest, to any person or any, corporation, bank, trust
 60 company, or other entity duly formed under the laws of its state
 61 of qualification ~~qualified to act as a fiduciary in this state,~~
 62 in which recorded instrument the person, corporation, bank,
 63 trust company, or other entity is designated "trustee," or "as
 64 trustee," without therein naming the beneficiaries of such
 65 trust, whether or not reference is made in the recorded
 66 instrument to any separate collateral unrecorded declarations or
 67 agreements, is effective to vest, and is hereby declared to have
 68 vested, in such trustee full rights of ownership over the real
 69 property or interest therein, with full power and authority as
 70 granted and provided in the recorded instrument to deal in and
 71 with the property or interest therein or any part thereof;
 72 provided, the recorded instrument confers on the trustee the
 73 power and authority either to protect, conserve and to sell, or
 74 to lease, or to encumber, or otherwise to manage and dispose of
 75 the real property described in the recorded instrument.

76 (4)-(2) NO DUTY TO INQUIRE.--Any grantee, mortgagee,
 77 lessee, transferee, assignee, or person obtaining satisfactions
 78 or releases or otherwise in any way dealing with the trustee

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79 | with respect to the real property or any interest in such
 80 | property ~~properties~~ held in trust under the recorded instrument,
 81 | as hereinabove provided for, is not obligated to inquire into
 82 | the identification or status of any named or unnamed
 83 | beneficiaries, or their heirs or assigns to whom a trustee may
 84 | be accountable under the terms of the recorded instrument, or
 85 | under any unrecorded separate declarations or agreements
 86 | collateral to the recorded instrument, whether or not such
 87 | declarations or agreements are referred to therein; or to
 88 | inquire into or ascertain the authority of such trustee to act
 89 | within and exercise the powers granted under the recorded
 90 | instrument; or to inquire into the adequacy or disposition of
 91 | any consideration, if any is paid or delivered to such trustee
 92 | in connection with any interest so acquired from such trustee;
 93 | or to inquire into any of the provisions of any such unrecorded
 94 | declarations or agreements.

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

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107 | ~~prevents~~ a beneficiary of any such unrecorded collateral
 108 | declarations or agreements from enforcing the terms thereof
 109 | against the trustee.

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

116 | ~~(7)-(5)~~ TRUSTEE LIABILITY.--In addition to any other
 117 | limitation on personal liability existing pursuant to statute or
 118 | otherwise, the provisions of s. 737.306 apply to the trustee of
 119 | a land trust created pursuant to this section.

120 | (8) LAND TRUST BENEFICIARIES.--

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

125 | (b) Any beneficiary acting under the trust agreement of a
 126 | land trust is not liable to the land trust's trustee or to any
 127 | other beneficiary for the beneficiary's good faith reliance on
 128 | the provisions of the trust agreement.

129 | (c) Chapter 679 applies to the perfection of any security
 130 | interest in a beneficial interest in a land trust. The
 131 | perfection of a security interest in a beneficial interest in a
 132 | land trust does not impair or diminish the authority of the
 133 | trustee under the recorded instrument, and parties dealing with

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134 | the trustee are not required to inquire into the terms of the
135 | unrecorded trust agreement.

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

138 | (e) Any subsequent document appearing of record in which a
139 | beneficiary of a trust transfers or encumbers the beneficial
140 | interest in the trust does not diminish or impair the authority
141 | of the trustee under the terms of the recorded instrument.

142 | Parties dealing with the trustee are not required to inquire
143 | into the terms of the unrecorded trust agreement.

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

162 defeat, or otherwise affect or change the enjoyment of any
 163 beneficial interest.

164 (g) A trust relating to real estate does not fail, and any
 165 use relating to real estate may not be defeated, because
 166 beneficiaries are not specified by name in the recorded deed of
 167 conveyance to the trustee or because duties are not imposed upon
 168 the trustee. The power conferred by any recorded deed of
 169 conveyance on a trustee to sell, lease, encumber, or otherwise
 170 dispose of property described in the deed is effective, and a
 171 person dealing with the trustee is not required to inquire any
 172 further into the right of the trustee to act or the disposition
 173 of any proceeds.

174 (h) The principal residence of a beneficiary shall be
 175 entitled to the homestead tax exemption even if the homestead is
 176 held by a trustee in a land trust, provided the beneficiary
 177 qualifies for the homestead exemption under chapter 196.

178 (9) SUCCESSOR TRUSTEE.--

179 (a) The provisions of s. 737.309 relating to the
 180 resignation of a trustee do not apply to the appointment of a
 181 successor trustee under this section.

182 (b) If the recorded instrument and the unrecorded land
 183 trust agreement are silent as to the appointment of a successor
 184 trustee in the event of the death, incapacity, resignation, or
 185 termination due to dissolution of a land trustee or if a land
 186 trustee is unable to serve as trustee, one or more persons or
 187 entities having the power of direction of the land trust
 188 agreement may appoint a successor trustee or trustees of the
 189 land trust by filing a declaration of appointment of a successor

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190 trustee or trustees in the office of the recorder of deeds in
 191 the county in which the trust property is located. The
 192 declaration must be signed by a beneficiary or beneficiaries of
 193 the trust and by each successor trustee, must be acknowledged in
 194 the manner provided for acknowledgment of deeds, and must
 195 contain:

- 196 1. The legal description of the trust property.
- 197 2. The name and address of the former trustee.
- 198 3. The name and address of each successor trustee.
- 199 4. A statement that each successor trustee has been
 200 appointed by one or more persons or entities having the power of
 201 direction of the land trust, together with an acceptance of
 202 appointment by each successor trustee.

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

- 216 1. The legal description of the trust property.
- 217 2. The name and address of the former trustee.

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218 3. The name and address of the successor trustee.

219 4. A statement of resignation by the former trustee and a
220 statement of acceptance of appointment by each successor
221 trustee.

222 5. A statement that each successor trustee was duly
223 appointed under the terms of the unrecorded land trust
224 agreement.

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226 If the appointment of any successor trustee is due to the death
227 or incapacity of the former trustee, the declaration need not be
228 signed by the former trustee and a copy of the death certificate
229 or a statement that the former trustee is incapacitated or
230 unable to serve must be attached to or included in the
231 declaration, as applicable.

232 (d) If the recorded instrument provides for the
233 appointment of any successor trustee and any successor trustee
234 is appointed in accordance with the recorded instrument, no
235 additional declarations of appointment of any successor trustee
236 are required under this section.

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

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246 or exercise the powers granted under the recorded instruments or
247 any unrecorded declarations or agreements.

248 (f) A land trust agreement may provide that the trustee,
249 when directed to do so by the beneficiaries of the land trust or
250 legal representatives of the beneficiaries, may convey the trust
251 property directly to another trustee on behalf of the
252 beneficiaries or others named by the beneficiaries.

253 (10) TRUSTEE AS CREDITOR.--

254 (a) If a debt is secured by a security interest in a
255 beneficial interest in a land trust or by a mortgage on land
256 trust property, the validity or enforceability of the debt,
257 security interest, or mortgage and the rights, remedies, powers,
258 and duties of the creditor with respect to the debt or the
259 security are not affected by the fact that the creditor and the
260 trustee are the same person or entity, and the creditor may
261 extend credit, obtain any necessary security interest or
262 mortgage, and acquire and deal with the property comprising the
263 security as though the creditor were not the trustee.

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

271 (11)-(6) REMEDIAL ACT.--This act is remedial in nature and
272 shall be given a liberal interpretation to effectuate the intent
273 and purposes hereinabove expressed.

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274 | ~~(12)(7)~~ EXCLUSION.--This act does not apply to any deed,
275 | mortgage, or other instrument to which s. 689.07 applies.

276 | Section 2. Subsection (4) of section 201.02, Florida
277 | Statutes, is amended to read:

278 | 201.02 Tax on deeds and other instruments relating to real
279 | property or interests in real property.--

280 | (4) The tax imposed by subsection (1) shall also be
281 | payable upon documents which convey or transfer, pursuant to s.
282 | 689.071, any beneficial interest in lands, tenements, or other
283 | real property, or any interest therein, even though such
284 | interest may be designated as personal property, notwithstanding
285 | the provisions of s. 689.071~~(6)(4)~~. The tax shall be paid upon
286 | execution of any such document.

287 | Section 3. This act is intended to clarify existing law
288 | and applies to all land trusts whether created before, on, or
289 | after October 1, 2006.

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