

1 A bill to be entitled
2 An act relating to the administration of trusts; amending
3 s. 689.071, F.S.; limiting the definition of the term
4 "land trust" to an arrangement in which title to real
5 property is vested in a trustee by a recorded instrument
6 that confers certain authority as prescribed by state law;
7 providing that such a recorded instrument does not itself
8 create an entity; providing that a recorded instrument is
9 effective regardless of whether it refers to beneficiaries
10 of the trust; providing that a recorded instrument vests
11 both legal and equitable title to real property or the
12 interest therein in the trustee; conforming cross-
13 references; amending s. 731.303, F.S.; excluding trusts
14 from guidelines regarding administration and judicial
15 proceedings; amending s. 736.0102, F.S.; conforming a
16 cross-reference; amending s. 736.0501, F.S.; limiting the
17 ability of creditors or assignees of a beneficiary to
18 reach the beneficiary's interest in a trust; amending s.
19 736.0502, F.S.; clarifying the application of restrictions
20 on transferring a beneficiary's interest under a
21 spendthrift provision; amending s. 736.0503, F.S.;
22 providing an exception to a provision authorizing the
23 attachment of trust distributions; amending s. 736.0504,
24 F.S.; defining the term "discretionary distribution";
25 prohibiting certain creditors from compelling
26 distributions or attaching a beneficiary's interest or
27 expectancy; amending ss. 736.0813 and 736.1008, F.S.;
28 conforming dates of applicability of the accounting

29 provision and corresponding limitations to the effective
 30 date of the code; amending s. 736.1011, F.S.; providing
 31 that direct communication of exculpatory terms to the
 32 trust settlor is required only for trusts created on or
 33 after July 1, 2007; amending s. 736.1106, F.S.; providing
 34 that certain antilapse provisions continue to apply to
 35 irrevocable trusts created between June 12, 2003, and July
 36 1, 2007; amending s. 736.1204, F.S.; clarifying the use of
 37 income interest of a trust; amending ss. 736.1209 and
 38 736.1001, F.S., relating to the release of power by a
 39 trustee and removal of a trustee; conforming cross-
 40 references; providing an effective date.

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

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44 Section 1. Paragraph (d) of subsection (2), subsections
 45 (3) and (7), and paragraph (a) of subsection (9) of section
 46 689.071, Florida Statutes, as amended by section 21 of chapter
 47 2006-217, Laws of Florida, are amended to read:

48 689.071 Florida Land Trust Act.--

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

50 (d) "Land trust" ~~is not the creation of an entity, but~~
 51 means any express written agreement or arrangement by which a
 52 use, confidence, or trust is declared of any land, or of any
 53 charge upon land, ~~for the use or benefit of any beneficiary,~~
 54 under which the title to real property, both legal and
 55 equitable, is vested in a trustee by a recorded instrument that
 56 confers on the trustee the power and authority prescribed in

57 subsection (3). The recorded instrument does not itself create
 58 an entity, regardless of whether the relationship among the
 59 beneficiaries and the trustee is deemed to be an entity under
 60 other applicable law held by a trustee, subject only to the
 61 execution of the trust, which may be enforced by the
 62 beneficiaries.

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

85 recorded instrument.

86 (7) TRUSTEE LIABILITY.--In addition to any other
 87 limitation on personal liability existing pursuant to statute or
 88 otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~
 89 ~~736.1013~~ apply to the trustee of a land trust created pursuant
 90 to this section.

91 (9) SUCCESSOR TRUSTEE.--

92 (a) The provisions of s. 736.0705 ~~s. 737.309~~ relating to
 93 the resignation of a trustee do not apply to the appointment of
 94 a successor trustee under this section.

95 Section 2. Section 731.303, Florida Statutes, as amended
 96 by section 30 of chapter 2006-217, Laws of Florida, is amended
 97 to read:

98 731.303 Representation.--In the administration of or in
 99 judicial proceedings involving estates of decedents ~~or trusts~~,
 100 the following apply:

101 (1) Persons are bound by orders binding others in the
 102 following cases:

103 (a)1. Orders binding the sole holder or all coholders of a
 104 power of revocation or a general, special, or limited power of
 105 appointment, including one in the form of a power of amendment
 106 or revocation to the extent that the power has not become
 107 unexercisable in fact, bind all persons to the extent that their
 108 interests, as persons who may take by virtue of the exercise or
 109 nonexercise of the power, are subject to the power.

110 2. Subparagraph 1. does not apply to:

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

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

114 c. A power of appointment held by a person while the
115 person is the sole trustee.

116 (b) To the extent there is no conflict of interest between
117 them or among the persons represented:

118 1. Orders binding a guardian of the property bind the
119 ward.

120 2. Orders binding a trustee bind beneficiaries of the
121 trust in proceedings to probate a will, in establishing or
122 adding to a trust, in reviewing the acts or accounts of a prior
123 fiduciary, and in proceedings involving creditors or other third
124 parties. However, for purposes of this section, a conflict of
125 interest shall be deemed to exist when each trustee of a trust
126 that is a beneficiary of the estate is also a personal
127 representative of the estate.

128 3. Orders binding a personal representative bind persons
129 interested in the undistributed assets of a decedent's estate,
130 in actions or proceedings by or against the estate.

131 (c) An unborn or unascertained person, or a minor or any
132 other person under a legal disability, who is not otherwise
133 represented is bound by an order to the extent that person's
134 interest is represented by another party having the same or
135 greater quality of interest in the proceeding.

136 (2) Orders binding a guardian of the person shall not bind
137 the ward.

138 (3) In proceedings involving the administration of estates
139 ~~or trusts~~, notice is required as follows:

140 (a) Notice as prescribed by law shall be given to every

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141 interested person, or to one who can bind the interested person
142 as described in paragraph (1)(a) or paragraph (1)(b). Notice may
143 be given both to the interested person and to another who can
144 bind him or her.

145 (b) Notice is given to unborn or unascertained persons who
146 are not represented pursuant to paragraph (1)(a) or paragraph
147 (1)(b) by giving notice to all known persons whose interests in
148 the proceedings are the same as, or of a greater quality than,
149 those of the unborn or unascertained persons.

150 (4) If the court determines that representation of the
151 interest would otherwise be inadequate, the court may, at any
152 time, appoint a guardian ad litem to represent the interests of
153 an incapacitated person, an unborn or unascertained person, a
154 minor or any other person otherwise under a legal disability, or
155 a person whose identity or address is unknown. If not precluded
156 by conflict of interest, a guardian ad litem may be appointed to
157 represent several persons or interests.

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

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

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

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

168 Section 3. Section 736.0102, Florida Statutes, is amended

169 to read:

170 736.0102 Scope.--This code applies to express trusts,
 171 charitable or noncharitable, and trusts created pursuant to a
 172 law, judgment, or decree that requires the trust to be
 173 administered in the manner of an express trust. This code does
 174 not apply to constructive or resulting trusts; conservatorships;
 175 custodial arrangements pursuant to the Florida Uniform Transfers
 176 to Minors Act; business trusts providing for certificates to be
 177 issued to beneficiaries; common trust funds; land trusts under
 178 s. 689.071, except to the extent provided in s. 689.071(7) s-
 179 ~~689.05~~; trusts created by the form of the account or by the
 180 deposit agreement at a financial institution; voting trusts;
 181 security arrangements; liquidation trusts; trusts for the
 182 primary purpose of paying debts, dividends, interest, salaries,
 183 wages, profits, pensions, or employee benefits of any kind; and
 184 any arrangement under which a person is nominee or escrowee for
 185 another.

186 Section 4. Section 736.0501, Florida Statutes, is amended
 187 to read:

188 736.0501 Rights of beneficiary's creditor or
 189 assignee.--Except as provided in s. 736.0504, to the extent a
 190 beneficiary's interest is not subject to a spendthrift
 191 provision, the court may authorize a creditor or assignee of the
 192 beneficiary to reach the beneficiary's interest by attachment of
 193 present or future distributions to or for the benefit of the
 194 beneficiary or by other means. The court may limit the award to
 195 such relief as is appropriate under the circumstances.

196 Section 5. Subsection (1) of section 736.0502, Florida

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197 Statutes, is amended to read:

198 736.0502 Spendthrift provision.--

199 (1) A spendthrift provision is valid only if the provision
 200 restrains both voluntary and involuntary transfer of a
 201 beneficiary's interest. This subsection does not apply to any
 202 trust the terms of which are included in an instrument executed
 203 before ~~in existence on~~ the effective date of this code.

204 Section 6. Subsection (3) of section 736.0503, Florida
 205 Statutes, is amended to read:

206 736.0503 Exceptions to spendthrift provision.--

207 (3) Except as otherwise provided in this subsection and in
 208 s. 736.0504, a claimant against which a spendthrift provision
 209 may not be enforced may obtain from a court, or pursuant to the
 210 Uniform Interstate Family Support Act, an order attaching
 211 present or future distributions to or for the benefit of the
 212 beneficiary. The court may limit the award to such relief as is
 213 appropriate under the circumstances. Notwithstanding this
 214 subsection, the remedies provided in this subsection apply to a
 215 claim by a beneficiary's child, spouse, former spouse, or a
 216 judgment creditor described in paragraph (2)(a) or paragraph
 217 (2)(b) only as a last resort upon an initial showing that
 218 traditional methods of enforcing the claim are insufficient.

219 Section 7. Section 736.0504, Florida Statutes, is amended
 220 to read:

221 736.0504 Discretionary trusts; effect of standard.--

222 (1) As used in this section, the term "discretionary
 223 distribution" means a distribution that is subject to the
 224 trustee's discretion whether or not the discretion is expressed

225 in the form of a standard of distribution and whether or not the
 226 trustee has abused the discretion.

227 (2) Whether or not a trust contains a spendthrift
 228 provision, if a trustee may make discretionary distributions to
 229 or for the benefit of a beneficiary, a creditor of the
 230 beneficiary, including a creditor as described in s.
 231 736.0503(2), may not:

232 (a) Compel a distribution that is subject to the trustee's
 233 discretion; or

234 (b) Attach or otherwise reach the interest, if any, which
 235 the beneficiary might have as a result of the trustee's
 236 authority to make discretionary distributions to or for the
 237 benefit of the beneficiary. ~~Whether or not a trust contains a~~
 238 ~~spendthrift provision, a creditor of a beneficiary may not~~
 239 ~~compel a distribution that is subject to the trustee's~~
 240 ~~discretion, even if:~~

241 ~~(a) The discretion is expressed in the form of a standard~~
 242 ~~of distribution; or~~

243 ~~(b) The trustee has abused the discretion.~~

244 (3)~~(2)~~ If the trustee's discretion to make distributions
 245 for the trustee's own benefit is limited by an ascertainable
 246 standard, a creditor may not reach or compel distribution of the
 247 beneficial interest except to the extent the interest would be
 248 subject to the creditor's claim were the beneficiary not acting
 249 as trustee.

250 (4)~~(3)~~ This section does not limit the right of a
 251 beneficiary to maintain a judicial proceeding against a trustee
 252 for an abuse of discretion or failure to comply with a standard

253 for distribution.

254 Section 8. Subsection (5) of section 736.0813, Florida
 255 Statutes, is amended to read:

256 736.0813 Duty to inform and account.--The trustee shall
 257 keep the qualified beneficiaries of the trust reasonably
 258 informed of the trust and its administration.

259 (5) This section applies to trust accountings rendered for
 260 accounting periods beginning on or after July 1, 2007 ~~January 1,~~
 261 ~~2008~~.

262 Section 9. Subsection (6) of section 736.1008, Florida
 263 Statutes, is amended to read:

264 736.1008 Limitations on proceedings against trustees.--

265 (6) This section applies to trust accountings for
 266 accounting periods beginning on or after July 1, 2007 ~~January 1,~~
 267 ~~2008~~, and to written reports, other than trust accountings,
 268 received by a beneficiary on or after July 1, 2007 ~~January 1,~~
 269 ~~2008~~.

270 Section 10. Subsection (2) of section 736.1011, Florida
 271 Statutes, is amended to read:

272 736.1011 Exculpation of trustee.--

273 (2) An exculpatory term drafted or caused to be drafted by
 274 the trustee is invalid as an abuse of a fiduciary or
 275 confidential relationship unless:

276 (a) The trustee proves that the exculpatory term is fair
 277 under the circumstances; and ~~that~~

278 (b) The term's existence and contents were adequately
 279 communicated directly to the settlor. This paragraph applies
 280 only to trusts created on or after July 1, 2007.

281 Section 11. Subsection (5) of section 736.1106, Florida
 282 Statutes, is amended to read:

283 736.1106 Antilapse; survivorship with respect to future
 284 interests under terms of inter vivos and testamentary trusts;
 285 substitute takers.--

286 (5) Subsections (1) through (4) apply ~~This section applies~~
 287 to all trusts other than trusts that were irrevocable before the
 288 effective date of this code. Sections 732.603, 732.604, and
 289 737.6035, as they exist on June 30, 2007, continue to apply to
 290 other trusts executed on or after June 12, 2003.

291 Section 12. Paragraph (a) of subsection (4) of section
 292 736.1204, Florida Statutes, is amended to read:

293 736.1204 Powers and duties of trustee of a private
 294 foundation trust or a split interest trust.--

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

297 (a) All the income interest ~~from income~~, and none of the
 298 remainder interest, of the trust is devoted solely to one or
 299 more of the purposes described in s. 170(c)(2)(B) of the
 300 Internal Revenue Code, and all amounts in the trust for which a
 301 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
 302 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
 303 Revenue Code have an aggregate fair market value of not more
 304 than 60 percent of the aggregate fair market value of all
 305 amounts in the trust; or

306 Section 13. Section 736.1209, Florida Statutes, is amended
 307 to read:

308 736.1209 Election to come under this part.--With the

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309 consent of that organization or organizations, a trustee of a
310 trust for the benefit of a public charitable organization or
311 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
312 filing with the state attorney an election, accompanied by the
313 proof of required consent. Thereafter the trust shall be subject
314 to s. 736.1208(5).

315 Section 14. Paragraph (g) of subsection (2) of section
316 736.1001, Florida Statutes, is amended to read:

317 736.1001 Remedies for breach of trust.--

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

320 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~
321 ~~736.706~~;

322 Section 15. This act shall take effect July 1, 2007.