

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. 731.201, F.S.; revising a
14 definition; amending s. 731.303, F.S.; excluding trusts
15 from guidelines regarding administration and judicial
16 proceedings; amending s. 736.0102, F.S.; conforming a
17 cross-reference; amending s. 736.0501, F.S.; limiting the
18 ability of creditors or assignees of a beneficiary to
19 reach the beneficiary's interest in a trust; amending s.
20 736.0502, F.S.; clarifying the application of restrictions
21 on transferring a beneficiary's interest under a
22 spendthrift provision; amending s. 736.0503, F.S.;
23 providing an exception to a provision authorizing the
24 attachment of trust distributions; amending s. 736.0504,
25 F.S.; defining the term "discretionary distribution";
26 prohibiting certain creditors from compelling
27 distributions or attaching a beneficiary's interest or
28 expectancy; amending ss. 736.0813 and 736.1008, F.S.;

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

43

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

45

46 Section 1. Paragraph (d) of subsection (2), subsections
 47 (3) and (7), and paragraph (a) of subsection (9) of section
 48 689.071, Florida Statutes, as amended by section 21 of chapter
 49 2006-217, Laws of Florida, are amended to read:

50 689.071 Florida Land Trust Act.--

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

52 (d) "Land trust" ~~is not the creation of an entity, but~~
 53 means any express written agreement or arrangement by which a
 54 use, confidence, or trust is declared of any land, or of any
 55 charge upon land, ~~for the use or benefit of any beneficiary,~~
 56 under which the title to real property, both legal and

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

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

CS/HB 1183

2007

85 conserve, ~~and~~ to sell, ~~or~~ to lease, ~~or~~ to encumber, or otherwise
 86 to manage and dispose of the real property described in the
 87 recorded instrument.

88 (7) TRUSTEE LIABILITY.--In addition to any other
 89 limitation on personal liability existing pursuant to statute or
 90 otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~
 91 ~~736.1013~~ apply to the trustee of a land trust created pursuant
 92 to this section.

93 (9) SUCCESSOR TRUSTEE.--

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

97 Section 2. Subsection (35) of section 731.201, Florida
 98 Statutes, as amended by section 29 of chapter 2006-217, Laws of
 99 Florida, is amended to read:

100 731.201 General definitions.--Subject to additional
 101 definitions in subsequent chapters that are applicable to
 102 specific chapters or parts, and unless the context otherwise
 103 requires, in this code, in s. 409.9101, and in chapters 736,
 104 738, 739, and 744, the term:

105 (35) "Trust" means an express trust, private or
 106 charitable, with additions to it, wherever and however created.
 107 It also includes a trust created or determined by a judgment or
 108 decree under which the trust is to be administered in the manner
 109 of an express trust. "Trust" excludes other constructive trusts,
 110 and it excludes resulting trusts; conservatorships; custodial
 111 arrangements pursuant to the Florida Uniform Transfers to Minors
 112 Act; business trusts providing for certificates to be issued to

113 beneficiaries; common trust funds; land trusts under s. 689.071,
 114 except to the extent provided in s. 689.071(7) ~~689.05~~; trusts
 115 created by the form of the account or by the deposit agreement
 116 at a financial institution; voting trusts; security
 117 arrangements; liquidation trusts; trusts for the primary purpose
 118 of paying debts, dividends, interest, salaries, wages, profits,
 119 pensions, or employee benefits of any kind; and any arrangement
 120 under which a person is nominee or escrowee for another.

121 Section 3. Section 731.303, Florida Statutes, as amended
 122 by section 30 of chapter 2006-217, Laws of Florida, is amended
 123 to read:

124 731.303 Representation.--In the administration of or in
 125 judicial proceedings involving estates of decedents ~~or trusts~~,
 126 the following apply:

127 (1) Persons are bound by orders binding others in the
 128 following cases:

129 (a)1. Orders binding the sole holder or all coholders of a
 130 power of revocation or a general, special, or limited power of
 131 appointment, including one in the form of a power of amendment
 132 or revocation to the extent that the power has not become
 133 unexercisable in fact, bind all persons to the extent that their
 134 interests, as persons who may take by virtue of the exercise or
 135 nonexercise of the power, are subject to the power.

136 2. Subparagraph 1. does not apply to:

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

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

140 c. A power of appointment held by a person while the

141 person is the sole trustee.

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

144 1. Orders binding a guardian of the property bind the
145 ward.

146 2. Orders binding a trustee bind beneficiaries of the
147 trust in proceedings to probate a will, in establishing or
148 adding to a trust, in reviewing the acts or accounts of a prior
149 fiduciary, and in proceedings involving creditors or other third
150 parties. However, for purposes of this section, a conflict of
151 interest shall be deemed to exist when each trustee of a trust
152 that is a beneficiary of the estate is also a personal
153 representative of the estate.

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

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

162 (2) Orders binding a guardian of the person shall not bind
163 the ward.

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

166 (a) Notice as prescribed by law shall be given to every
167 interested person, or to one who can bind the interested person
168 as described in paragraph (1) (a) or paragraph (1) (b). Notice may

169 be given both to the interested person and to another who can
 170 bind him or her.

171 (b) Notice is given to unborn or unascertained persons who
 172 are not represented pursuant to paragraph (1)(a) or paragraph
 173 (1)(b) by giving notice to all known persons whose interests in
 174 the proceedings are the same as, or of a greater quality than,
 175 those of the unborn or unascertained persons.

176 (4) If the court determines that representation of the
 177 interest would otherwise be inadequate, the court may, at any
 178 time, appoint a guardian ad litem to represent the interests of
 179 an incapacitated person, an unborn or unascertained person, a
 180 minor or any other person otherwise under a legal disability, or
 181 a person whose identity or address is unknown. If not precluded
 182 by conflict of interest, a guardian ad litem may be appointed to
 183 represent several persons or interests.

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

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

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

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

194 Section 4. Section 736.0102, Florida Statutes, is amended
 195 to read:

196 736.0102 Scope.--This code applies to express trusts,

CS/HB 1183

2007

197 charitable or noncharitable, and trusts created pursuant to a
 198 law, judgment, or decree that requires the trust to be
 199 administered in the manner of an express trust. This code does
 200 not apply to constructive or resulting trusts; conservatorships;
 201 custodial arrangements pursuant to the Florida Uniform Transfers
 202 to Minors Act; business trusts providing for certificates to be
 203 issued to beneficiaries; common trust funds; land trusts under
 204 s. 689.071, except to the extent provided in s. 689.071(7) ~~s.~~
 205 ~~689.05~~; trusts created by the form of the account or by the
 206 deposit agreement at a financial institution; voting trusts;
 207 security arrangements; liquidation trusts; trusts for the
 208 primary purpose of paying debts, dividends, interest, salaries,
 209 wages, profits, pensions, or employee benefits of any kind; and
 210 any arrangement under which a person is nominee or escrowee for
 211 another.

212 Section 5. Section 736.0501, Florida Statutes, is amended
 213 to read:

214 736.0501 Rights of beneficiary's creditor or
 215 assignee.--Except as provided in s. 736.0504, to the extent a
 216 beneficiary's interest is not subject to a spendthrift
 217 provision, the court may authorize a creditor or assignee of the
 218 beneficiary to reach the beneficiary's interest by attachment of
 219 present or future distributions to or for the benefit of the
 220 beneficiary or by other means. The court may limit the award to
 221 such relief as is appropriate under the circumstances.

222 Section 6. Subsection (1) of section 736.0502, Florida
 223 Statutes, is amended to read:

224 736.0502 Spendthrift provision.--

CS/HB 1183

2007

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

230 Section 7. Subsection (3) of section 736.0503, Florida
 231 Statutes, is amended to read:

232 736.0503 Exceptions to spendthrift provision.--

233 (3) Except as otherwise provided in this subsection and in
 234 s. 736.0504, a claimant against which a spendthrift provision
 235 may not be enforced may obtain from a court, or pursuant to the
 236 Uniform Interstate Family Support Act, an order attaching
 237 present or future distributions to or for the benefit of the
 238 beneficiary. The court may limit the award to such relief as is
 239 appropriate under the circumstances. Notwithstanding this
 240 subsection, the remedies provided in this subsection apply to a
 241 claim by a beneficiary's child, spouse, former spouse, or a
 242 judgment creditor described in paragraph (2)(a) or paragraph
 243 (2)(b) only as a last resort upon an initial showing that
 244 traditional methods of enforcing the claim are insufficient.

245 Section 8. Section 736.0504, Florida Statutes, is amended
 246 to read:

247 736.0504 Discretionary trusts; effect of standard.--

248 (1) As used in this section, the term "discretionary
 249 distribution" means a distribution that is subject to the
 250 trustee's discretion whether or not the discretion is expressed
 251 in the form of a standard of distribution and whether or not the
 252 trustee has abused the discretion.

253 (2) Whether or not a trust contains a spendthrift
 254 provision, if a trustee may make discretionary distributions to
 255 or for the benefit of a beneficiary, a creditor of the
 256 beneficiary, including a creditor as described in s.
 257 736.0503(2), may not:

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

260 (b) Attach or otherwise reach the interest, if any, which
 261 the beneficiary might have as a result of the trustee's
 262 authority to make discretionary distributions to or for the
 263 benefit of the beneficiary. ~~Whether or not a trust contains a~~
 264 ~~spendthrift provision, a creditor of a beneficiary may not~~
 265 ~~compel a distribution that is subject to the trustee's~~
 266 ~~discretion, even if:~~

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

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

270 (3)-(2) If the trustee's discretion to make distributions
 271 for the trustee's own benefit is limited by an ascertainable
 272 standard, a creditor may not reach or compel distribution of the
 273 beneficial interest except to the extent the interest would be
 274 subject to the creditor's claim were the beneficiary not acting
 275 as trustee.

276 (4)-(3) This section does not limit the right of a
 277 beneficiary to maintain a judicial proceeding against a trustee
 278 for an abuse of discretion or failure to comply with a standard
 279 for distribution.

280 Section 9. Subsection (5) of section 736.0813, Florida

CS/HB 1183

2007

281 Statutes, is amended to read:

282 736.0813 Duty to inform and account.--The trustee shall
 283 keep the qualified beneficiaries of the trust reasonably
 284 informed of the trust and its administration.

285 (5) This section applies to trust accountings rendered for
 286 accounting periods beginning on or after July 1, 2007 ~~January 1,~~
 287 ~~2008~~.

288 Section 10. Subsection (6) of section 736.1008, Florida
 289 Statutes, is amended to read:

290 736.1008 Limitations on proceedings against trustees.--

291 (6) This section applies to trust accountings for
 292 accounting periods beginning on or after July 1, 2007 ~~January 1,~~
 293 ~~2008~~, and to written reports, other than trust accountings,
 294 received by a beneficiary on or after July 1, 2007 ~~January 1,~~
 295 ~~2008~~.

296 Section 11. Subsection (2) of section 736.1011, Florida
 297 Statutes, is amended to read:

298 736.1011 Exculpation of trustee.--

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

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

304 (b) The term's existence and contents were adequately
 305 communicated directly to the settlor or the independent attorney
 306 of the settlor. This paragraph applies only to trusts created on
 307 or after July 1, 2007.

308 Section 12. Subsection (5) of section 736.1106, Florida

309 Statutes, is amended to read:

310 736.1106 Antilapse; survivorship with respect to future
 311 interests under terms of inter vivos and testamentary trusts;
 312 substitute takers.--

313 (5) Subsections (1) through (4) apply ~~This section applies~~
 314 to all trusts other than trusts that were irrevocable before the
 315 effective date of this code. Sections 732.603, 732.604, and
 316 737.6035, as they exist on June 30, 2007, continue to apply to
 317 other trusts executed on or after June 12, 2003.

318 Section 13. Paragraph (a) of subsection (4) of section
 319 736.1204, Florida Statutes, is amended to read:

320 736.1204 Powers and duties of trustee of a private
 321 foundation trust or a split interest trust.--

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

324 (a) All the income interest ~~from income~~, and none of the
 325 remainder interest, of the trust is devoted solely to one or
 326 more of the purposes described in s. 170(c)(2)(B) of the
 327 Internal Revenue Code, and all amounts in the trust for which a
 328 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
 329 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
 330 Revenue Code have an aggregate fair market value of not more
 331 than 60 percent of the aggregate fair market value of all
 332 amounts in the trust; or

333 Section 14. Section 736.1209, Florida Statutes, is amended
 334 to read:

335 736.1209 Election to come under this part.--With the
 336 consent of that organization or organizations, a trustee of a

CS/HB 1183

2007

337 trust for the benefit of a public charitable organization or
338 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
339 filing with the state attorney an election, accompanied by the
340 proof of required consent. Thereafter the trust shall be subject
341 to s. 736.1208(5).

342 Section 15. Paragraph (g) of subsection (2) of section
343 736.1001, Florida Statutes, is amended to read:

344 736.1001 Remedies for breach of trust.--

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

347 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~
348 ~~736.706~~;

349 Section 16. This act shall take effect July 1, 2007.