

Bill No. CS for SB 2218

Barcode 303240

CHAMBER ACTION

Senate

House

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04/23/2007 04:30 PM

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The Committee on Judiciary (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

On page 13, between lines 25 and 26,

insert:

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

689.071 Florida Land Trust Act.--

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

(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 vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in subsection (3). The recorded instrument does not itself

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1 create an entity, regardless of whether the relationship among
 2 the beneficiaries and the trustee is deemed to be an entity
 3 under other applicable law ~~held by a trustee, subject only to~~
 4 ~~the execution of the trust, which may be enforced by the~~
 5 ~~beneficiaries.~~

6 (3) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
 7 deed, mortgage, lease assignment, or other instrument
 8 heretofore or hereafter made, hereinafter referred to as the
 9 ~~the~~ recorded instrument," transferring any interest in real
 10 property in this state, including, but not limited to, a
 11 leasehold or mortgagee interest, to any person or any
 12 corporation, bank, trust company, or other entity duly formed
 13 under the laws of its state of qualification, in which
 14 recorded instrument the person, corporation, bank, trust
 15 company, or other entity is designated "trustee," or "as
 16 trustee," ~~without therein naming the beneficiaries of such~~
 17 ~~trust,~~ whether or not reference is made in the recorded
 18 instrument to the beneficiaries of such trust or to any
 19 separate collateral unrecorded declarations or agreements, is
 20 effective to vest, and is hereby declared to have vested, in
 21 such trustee both legal and equitable title, and full rights
 22 of ownership, over the real property or interest therein, with
 23 full power and authority as granted and provided in the
 24 recorded instrument to deal in and with the property or
 25 interest therein or any part thereof; provided, the recorded
 26 instrument confers on the trustee the power and authority
 27 ~~either~~ to protect, to conserve, ~~and~~ to sell, ~~or~~ to lease, ~~or~~
 28 to encumber, or otherwise to manage and dispose of the real
 29 property described in the recorded instrument.

30 (7) TRUSTEE LIABILITY.--In addition to any other
 31 limitation on personal liability existing pursuant to statute

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1 or otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~
2 ~~736.1013~~ apply to the trustee of a land trust created pursuant
3 to this section.

4 (9) SUCCESSOR TRUSTEE.--

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

8 Section 8. Subsection (35) of section 731.201, Florida
9 Statutes, as amended by section 29 of chapter 2006-217, Laws
10 of Florida, is amended to read:

11 731.201 General definitions.--Subject to additional
12 definitions in subsequent chapters that are applicable to
13 specific chapters or parts, and unless the context otherwise
14 requires, in this code, in s. 409.9101, and in chapters 736,
15 738, 739, and 744, the term:

16 (35) "Trust" means an express trust, private or
17 charitable, with additions to it, wherever and however
18 created. It also includes a trust created or determined by a
19 judgment or decree under which the trust is to be administered
20 in the manner of an express trust. "Trust" excludes other
21 constructive trusts, and it excludes resulting trusts;
22 conservatorships; custodial arrangements pursuant to the
23 Florida Uniform Transfers to Minors Act; business trusts
24 providing for certificates to be issued to beneficiaries;
25 common trust funds; land trusts under s. 689.071, except to
26 the extent provided in s. 689.071(7) ~~s. 689.05~~; trusts created
27 by the form of the account or by the deposit agreement at a
28 financial institution; voting trusts; security arrangements;
29 liquidation trusts; trusts for the primary purpose of paying
30 debts, dividends, interest, salaries, wages, profits,
31 pensions, or employee benefits of any kind; and any

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1 arrangement under which a person is nominee or escrowee for
2 another.

3 Section 9. Section 731.303, Florida Statutes, as
4 amended by section 30 of chapter 2006-217, Laws of Florida, is
5 amended to read:

6 731.303 Representation.--In the administration of or
7 in judicial proceedings involving estates of decedents ~~or~~
8 ~~trusts~~, the following apply:

9 (1) Persons are bound by orders binding others in the
10 following cases:

11 (a)1. Orders binding the sole holder or all coholders
12 of a power of revocation or a general, special, or limited
13 power of appointment, including one in the form of a power of
14 amendment or revocation to the extent that the power has not
15 become unexercisable in fact, bind all persons to the extent
16 that their interests, as persons who may take by virtue of the
17 exercise or nonexercise of the power, are subject to the
18 power.

19 2. Subparagraph 1. does not apply to:

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

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

24 c. A power of appointment held by a person while the
25 person is the sole trustee.

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

28 1. Orders binding a guardian of the property bind the
29 ward.

30 2. Orders binding a trustee bind beneficiaries of the
31 trust in proceedings to probate a will, in establishing or

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1 adding to a trust, in reviewing the acts or accounts of a
 2 prior fiduciary, and in proceedings involving creditors or
 3 other third parties. However, for purposes of this section, a
 4 conflict of interest shall be deemed to exist when each
 5 trustee of a trust that is a beneficiary of the estate is also
 6 a personal representative of the estate.

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

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

15 (2) Orders binding a guardian of the person shall not
 16 bind the ward.

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

19 (a) Notice as prescribed by law shall be given to
 20 every interested person, or to one who can bind the interested
 21 person as described in paragraph (1)(a) or paragraph (1)(b).
 22 Notice may be given both to the interested person and to
 23 another who can bind him or her.

24 (b) Notice is given to unborn or unascertained persons
 25 who are not represented pursuant to paragraph (1)(a) or
 26 paragraph (1)(b) by giving notice to all known persons whose
 27 interests in the proceedings are the same as, or of a greater
 28 quality than, those of the unborn or unascertained persons.

29 (4) If the court determines that representation of the
 30 interest would otherwise be inadequate, the court may, at any
 31 time, appoint a guardian ad litem to represent the interests

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1 of an incapacitated person, an unborn or unascertained person,
 2 a minor or any other person otherwise under a legal
 3 disability, or a person whose identity or address is unknown.
 4 If not precluded by conflict of interest, a guardian ad litem
 5 may be appointed to represent several persons or interests.

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

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

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

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

17 Section 10. Section 736.0102, Florida Statutes, is
 18 amended to read:

19 736.0102 Scope.--This code applies to express trusts,
 20 charitable or noncharitable, and trusts created pursuant to a
 21 law, judgment, or decree that requires the trust to be
 22 administered in the manner of an express trust. This code does
 23 not apply to constructive or resulting trusts;
 24 conservatorships; custodial arrangements pursuant to the
 25 Florida Uniform Transfers to Minors Act; business trusts
 26 providing for certificates to be issued to beneficiaries;
 27 common trust funds; land trusts under s. 689.071, except to
 28 the extent provided in s. 689.071(7) ~~s. 689.05~~; trusts created
 29 by the form of the account or by the deposit agreement at a
 30 financial institution; voting trusts; security arrangements;
 31 liquidation trusts; trusts for the primary purpose of paying

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1 debts, dividends, interest, salaries, wages, profits,
2 pensions, or employee benefits of any kind; and any
3 arrangement under which a person is nominee or escrowee for
4 another.

5 Section 11. Section 736.0501, Florida Statutes, is
6 amended to read:

7 736.0501 Rights of beneficiary's creditor or
8 assignee.--Except as provided in s. 736.0504, to the extent a
9 beneficiary's interest is not subject to a spendthrift
10 provision, the court may authorize a creditor or assignee of
11 the beneficiary to reach the beneficiary's interest by
12 attachment of present or future distributions to or for the
13 benefit of the beneficiary or by other means. The court may
14 limit the award to such relief as is appropriate under the
15 circumstances.

16 Section 12. Subsection (1) of section 736.0502,
17 Florida Statutes, is amended to read:

18 736.0502 Spendthrift provision.--

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

25 Section 13. Subsection (3) of section 736.0503,
26 Florida Statutes, is amended to read:

27 736.0503 Exceptions to spendthrift provision.--

28 (3) Except as otherwise provided in this subsection
29 and in s. 736.0504, a claimant against which a spendthrift
30 provision may not be enforced may obtain from a court, or
31 pursuant to the Uniform Interstate Family Support Act, an

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1 order attaching present or future distributions to or for the
 2 benefit of the beneficiary. The court may limit the award to
 3 such relief as is appropriate under the circumstances.
 4 Notwithstanding this subsection, the remedies provided in this
 5 subsection apply to a claim by a beneficiary's child, spouse,
 6 former spouse, or a judgment creditor described in paragraph
 7 (2)(a) or paragraph (2)(b) only as a last resort upon an
 8 initial showing that traditional methods of enforcing the
 9 claim are insufficient.

10 Section 14. Section 736.0504, Florida Statutes, is
 11 amended to read:

12 736.0504 Discretionary trusts; effect of standard.--

13 (1) As used in this section, the term "discretionary
 14 distribution" means a distribution that is subject to the
 15 trustee's discretion whether or not the discretion is
 16 expressed in the form of a standard of distribution and
 17 whether or not the trustee has abused the discretion.

18 (2) Whether or not a trust contains a spendthrift
 19 provision, if a trustee may make discretionary distributions
 20 to or for the benefit of a beneficiary, a creditor of the
 21 beneficiary, including a creditor as described in s.
 22 736.0503(2), may not:

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

25 (b) Attach or otherwise reach the interest, if any,
 26 which the beneficiary might have as a result of the trustee's
 27 authority to make discretionary distributions to or for the
 28 benefit of the beneficiary. ~~Whether or not a trust contains a~~
 29 spendthrift provision, a creditor of a beneficiary may not
 30 compel a distribution that is subject to the trustee's
 31 discretion, even if:

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

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

4 (3)(2) If the trustee's discretion to make
5 distributions for the trustee's own benefit is limited by an
6 ascertainable standard, a creditor may not reach or compel
7 distribution of the beneficial interest except to the extent
8 the interest would be subject to the creditor's claim were the
9 beneficiary not acting as trustee.

10 (4)(3) This section does not limit the right of a
11 beneficiary to maintain a judicial proceeding against a
12 trustee for an abuse of discretion or failure to comply with a
13 standard for distribution.

14 Section 15. Subsection (5) of section 736.0813,
15 Florida Statutes, is amended to read:

16 736.0813 Duty to inform and account.--The trustee
17 shall keep the qualified beneficiaries of the trust reasonably
18 informed of the trust and its administration.

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

22 Section 16. Subsection (5) of section 736.1106,
23 Florida Statutes, is amended to read:

24 736.1106 Antilapse; survivorship with respect to
25 future interests under terms of inter vivos and testamentary
26 trusts; substitute takers.--

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

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1 12, 2003.

2 Section 17. Paragraph (a) of subsection (4) of section
3 736.1204, Florida Statutes, is amended to read:

4 736.1204 Powers and duties of trustee of a private
5 foundation trust or a split interest trust.--

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

8 (a) All the income interest ~~from income~~, and none of
9 the remainder interest, of the trust is devoted solely to one
10 or more of the purposes described in s. 170(c)(2)(B) of the
11 Internal Revenue Code, and all amounts in the trust for which
12 a deduction was allowed under s. 170, s. 545(b)(2), s.
13 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of
14 the Internal Revenue Code have an aggregate fair market value
15 of not more than 60 percent of the aggregate fair market value
16 of all amounts in the trust; or

17 Section 18. Section 736.1209, Florida Statutes, is
18 amended to read:

19 736.1209 Election to come under this part.--With the
20 consent of that organization or organizations, a trustee of a
21 trust for the benefit of a public charitable organization or
22 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
23 filing with the state attorney an election, accompanied by the
24 proof of required consent. Thereafter the trust shall be
25 subject to s. 736.1208(5).

26 Section 19. Paragraph (g) of subsection (2) of section
27 736.1001, Florida Statutes, is amended to read:

28 736.1001 Remedies for breach of trust.--

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

31 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~

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1 ~~736.706;~~

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 On page 1, line 25, after the semicolon,

7

8 insert:

9 amending s. 689.071, F.S.; limiting the
10 definition of the term "land trust" to an
11 arrangement in which title to real property is
12 vested in a trustee by a recorded instrument
13 that confers certain authority as prescribed by
14 state law; providing that such a recorded
15 instrument does not itself create an entity;
16 providing that a recorded instrument is
17 effective regardless of whether it refers to
18 beneficiaries of the trust; providing that a
19 recorded instrument vests both legal and
20 equitable title to real property or the
21 interest therein in the trustee; conforming
22 cross-references; amending s. 731.201, F.S.;
23 revising a definition; amending s. 731.303,
24 F.S.; excluding trusts from guidelines
25 regarding administration and judicial
26 proceedings; amending s. 736.0102, F.S.;
27 conforming a cross-reference; amending s.
28 736.0501, F.S.; limiting the ability of
29 creditors or assignees of a beneficiary to
30 reach the beneficiary's interest in a trust;
31 amending s. 736.0502, F.S.; clarifying the

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1 application of restrictions on transferring a
2 beneficiary's interest under a spendthrift
3 provision; amending s. 736.0503, F.S.;
4 providing an exception to a provision
5 authorizing the attachment of trust
6 distributions; amending s. 736.0504, F.S.;
7 defining the term "discretionary distribution";
8 prohibiting certain creditors from compelling
9 distributions or attaching a beneficiary's
10 interest or expectancy; amending s. 736.0813,
11 F.S.; conforming a date of applicability of the
12 accounting provision and corresponding
13 limitations to the effective date of the code;
14 amending s. 736.1106, F.S.; providing that
15 certain antilapse provisions continue to apply
16 to irrevocable trusts created between June 12,
17 2003, and July 1, 2007; amending s. 736.1204,
18 F.S.; clarifying the use of income interest of
19 a trust; amending ss. 736.1209 and 736.1001,
20 F.S., relating to the release of power by a
21 trustee and removal of a trustee; conforming
22 cross-references;

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