

By the Committees on Judiciary; Banking and Insurance; and
Senator Posey

590-2619-07

1 A bill to be entitled
2 An act relating to trusts; amending s. 660.417,
3 F.S.; revising criteria for investments in
4 certain investment instruments; creating s.
5 736.04117, F.S.; providing criteria,
6 requirements, and limitations on a trustee's
7 power to invade the principal of a trust;
8 specifying conditions under which discretionary
9 distributions may be made in further trust;
10 amending s. 736.0802, F.S.; specifying
11 additional trust property transactions not
12 voidable by a beneficiary; revising certain
13 disclosure and applicability requirements;
14 broadening authority for investing in certain
15 investment instruments; revising definitions;
16 excusing trustees from certain compliance
17 requirements under certain circumstances;
18 amending s. 736.0816, F.S.; defining the term
19 "mutual fund" for certain purposes; amending s.
20 736.1008, F.S.; revising effective dates
21 relating to limitations on proceedings against
22 trustees; amending s. 736.1011, F.S.; providing
23 construction relating to trustee drafts of
24 exculpatory terms in a trust instrument;
25 amending s. 689.071, F.S.; limiting the
26 definition of the term "land trust" to an
27 arrangement in which title to real property is
28 vested in a trustee by a recorded instrument
29 that confers certain authority as prescribed by
30 state law; providing that such a recorded
31 instrument does not itself create an entity;

1 providing that a recorded instrument is
2 effective regardless of whether it refers to
3 beneficiaries of the trust; providing that a
4 recorded instrument vests both legal and
5 equitable title to real property or the
6 interest therein in the trustee; conforming
7 cross-references; amending s. 731.201, F.S.;
8 revising a definition; amending s. 731.303,
9 F.S.; excluding trusts from guidelines
10 regarding administration and judicial
11 proceedings; amending s. 736.0102, F.S.;
12 conforming a cross-reference; amending s.
13 736.0501, F.S.; limiting the ability of
14 creditors or assignees of a beneficiary to
15 reach the beneficiary's interest in a trust;
16 amending s. 736.0502, F.S.; clarifying the
17 application of restrictions on transferring a
18 beneficiary's interest under a spendthrift
19 provision; amending s. 736.0503, F.S.;
20 providing an exception to a provision
21 authorizing the attachment of trust
22 distributions; amending s. 736.0504, F.S.;
23 defining the term "discretionary distribution";
24 prohibiting certain creditors from compelling
25 distributions or attaching a beneficiary's
26 interest or expectancy; amending s. 736.0813,
27 F.S.; conforming a date of applicability of the
28 accounting provision and corresponding
29 limitations to the effective date of the code;
30 amending s. 736.1106, F.S.; providing that
31 certain antilapse provisions continue to apply

1 to irrevocable trusts created between June 12,
2 2003, and July 1, 2007; amending s. 736.1204,
3 F.S.; clarifying the use of income interest of
4 a trust; amending ss. 736.1209 and 736.1001,
5 F.S., relating to the release of power by a
6 trustee and removal of a trustee; conforming
7 cross-references; providing an effective date.
8

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

10
11 Section 1. Subsection (3) of section 660.417, Florida
12 Statutes, as amended by section 18 of chapter 2006-217, Laws
13 of Florida, is amended to read:

14 660.417 Investment of fiduciary funds in investment
15 instruments; permissible activity under certain circumstances;
16 limitations.--

17 (3) The fact that such bank or trust company or an
18 affiliate of the bank or trust company owns or controls
19 investment instruments shall not preclude the bank or trust
20 company acting as a fiduciary from investing or reinvesting in
21 such investment instruments, provided such investment
22 instruments:

23 (a) Are held for sale by the bank or trust company or
24 by an affiliate of the bank or trust company in the ordinary
25 course of its business of providing investment services to its
26 customers and do not include any such interests held by the
27 bank or trust company or by an affiliate of the bank or trust
28 company for its own account.

29 (b) When ~~Are~~ sold ~~primarily~~ to accounts for which the
30 bank or trust company is ~~not~~ acting as a trustee of a trust as
31 defined in s. 731.201(35):

1 1. Are available for sale to accounts of other
2 customers; and

3 2. If sold to other customers, are not sold to the
4 trust accounts fiduciary upon terms that are less not more
5 favorable to the buyer than the terms upon which they are
6 normally sold to the other customers accounts for which the
7 bank or trust company is acting as a fiduciary.

8 Section 2. Section 736.04117, Florida Statutes, is
9 created to read:

10 736.04117 Trustee's power to invade principal in
11 trust.--

12 (1)(a) Unless the trust instrument expressly provides
13 otherwise, a trustee who has absolute power under the terms of
14 a trust to invade the principal of the trust, referred to in
15 this section as the "first trust," to make distributions to or
16 for the benefit of one or more persons may instead exercise
17 the power by appointing all or part of the principal of the
18 trust subject to the power in favor of a trustee of another
19 trust, referred to in this section as the "second trust," for
20 the current benefit of one or more of such persons under the
21 same trust instrument or under a different trust instrument;
22 provided:

23 1. The beneficiaries of the second trust may include
24 only beneficiaries of the first trust;

25 2. The second trust may not reduce any fixed income,
26 annuity, or unitrust interest in the assets of the first
27 trust; and

28 3. If any contribution to the first trust qualified
29 for a marital or charitable deduction for federal income,
30 gift, or estate tax purposes under the Internal Revenue Code
31 of 1986, as amended, the second trust shall not contain any

1 provision which, if included in the first trust, would have
2 prevented the first trust from qualifying for such a deduction
3 or would have reduced the amount of such deduction.

4 (b) For purposes of this subsection, an absolute power
5 to invade principal shall include a power to invade principal
6 that is not limited to specific or ascertainable purposes,
7 such as health, education, maintenance, and support, whether
8 or not the term "absolute" is used. A power to invade
9 principal for purposes such as best interests, welfare,
10 comfort, or happiness shall constitute an absolute power not
11 limited to specific or ascertainable purposes.

12 (2) The exercise of a power to invade principal under
13 subsection (1) shall be by an instrument in writing, signed
14 and acknowledged by the trustee, and filed with the records of
15 the first trust.

16 (3) The exercise of a power to invade principal under
17 subsection (1) shall be considered the exercise of a power of
18 appointment, other than a power to appoint to the trustee, the
19 trustee's creditors, the trustee's estate, or the creditors of
20 the trustee's estate, and shall be subject to the provisions
21 of s. 689.225 covering the time at which the permissible
22 period of the rule against perpetuities begins and the law
23 that determines the permissible period of the rule against
24 perpetuities of the first trust.

25 (4) The trustee shall notify all qualified
26 beneficiaries of the first trust, in writing, at least 60 days
27 prior to the effective date of the trustee's exercise of the
28 trustee's power to invade principal pursuant to subsection
29 (1), of the manner in which the trustee intends to exercise
30 the power. A copy of the proposed instrument exercising the
31 power shall satisfy the trustee's notice obligation under this

1 subsection. If all qualified beneficiaries waive the notice
2 period by signed written instrument delivered to the trustee,
3 the trustee's power to invade principal shall be exercisable
4 immediately. The trustee's notice under this subsection shall
5 not limit the right of any beneficiary to object to the
6 exercise of the trustee's power to invade principal except as
7 provided in other applicable provisions of this code.

8 (5) The exercise of the power to invade principal
9 under subsection (1) is not prohibited by a spendthrift clause
10 or by a provision in the trust instrument that prohibits
11 amendment or revocation of the trust.

12 (6) Nothing in this section is intended to create or
13 imply a duty to exercise a power to invade principal and no
14 inference of impropriety shall be made as a result of a
15 trustee not exercising the power to invade principal conferred
16 under subsection (1).

17 (7) The provisions of this section shall not be
18 construed to abridge the right of any trustee who has a power
19 of invasion to appoint property in further trust that arises
20 under the terms of the first trust or under any other section
21 of this code or under another provision of law or under common
22 law.

23 Section 3. Subsections (2) and (5) of section
24 736.0802, Florida Statutes, are amended to read:

25 736.0802 Duty of loyalty.--

26 (2) Subject to the rights of persons dealing with or
27 assisting the trustee as provided in s. 736.1016, a sale,
28 encumbrance, or other transaction involving the investment or
29 management of trust property entered into by the trustee for
30 the trustee's own personal account or which is otherwise
31 affected by a conflict between the trustee's fiduciary and

1 personal interests is voidable by a beneficiary affected by
2 the transaction unless:

3 (a) The transaction was authorized by the terms of the
4 trust;

5 (b) The transaction was approved by the court;

6 (c) The beneficiary did not commence a judicial
7 proceeding within the time allowed by s. 736.1008;

8 (d) The beneficiary consented to the trustee's
9 conduct, ratified the transaction, or released the trustee in
10 compliance with s. 736.1012;

11 (e) The transaction involves a contract entered into
12 or claim acquired by the trustee when that person had not
13 become or contemplated becoming trustee; ~~or~~

14 (f) The transaction was consented to in writing by a
15 settlor of the trust while the trust was revocable; ~~or-~~

16 (g) The transaction is one by a corporate trustee that
17 involves a money market mutual fund, mutual fund, or a common
18 trust fund described in s. 736.0816(3).

19 (5)(a) An investment by a trustee authorized by lawful
20 authority to engage in trust business, as defined in s.
21 658.12(20), in investment instruments, as defined in s.
22 660.25(6), that are owned or controlled by the trustee or its
23 affiliate, or from which the trustee or its affiliate receives
24 compensation for providing services in a capacity other than
25 as trustee, is not presumed to be affected by a conflict
26 between personal and fiduciary interests provided the
27 investment otherwise complies with chapters 518 and 660 and
28 the trustee complies with the ~~disclosure~~ requirements of this
29 subsection.

30 (b) A trustee who, pursuant to this subsection,
31 invests trust funds in investment instruments that are owned

1 or controlled by the trustee or its affiliate shall disclose
2 the following to all qualified beneficiaries:

3 1. Notice that the trustee has invested trust funds in
4 investment instruments owned or controlled by the trustee or
5 its affiliate.

6 2. The identity of the investment instruments.

7 3. The identity and relationship to the trustee of any
8 affiliate that owns or controls the investment instruments.

9 (c) A trustee who, pursuant to this subsection,
10 invests trust funds in investment instruments with respect to
11 which the trustee or its affiliate receives compensation for
12 providing services in a capacity other than as trustee shall
13 disclose to all qualified beneficiaries, the nature of the
14 services provided by the trustee or its affiliate, and all
15 compensation, including, but not limited to, fees or
16 commissions paid or to be paid by the account and received or
17 to be received by an affiliate arising from such affiliated
18 investment.

19 (d) Disclosure required by this subsection shall be
20 made at least annually unless there has been no change in the
21 method or increase in the rate at which such compensation is
22 calculated since the most recent disclosure. The disclosure
23 may be given in a trust disclosure document as defined in s.
24 736.1008, in a copy of the prospectus for the investment
25 instrument, in any other written disclosure prepared for the
26 investment instrument under applicable federal or state law,
27 or in a written summary that includes all compensation
28 received or to be received by the trustee and any affiliate of
29 the trustee and an explanation of the manner in which such
30 compensation is calculated, either as a percentage of the
31 assets invested or by some other method.

1 (e) This subsection shall apply as follows:

2 1. This subsection does not apply to qualified
3 investment instruments or to a trust for which a right of
4 revocation exists.

5 2. For investment instruments other than qualified
6 investment instruments, paragraphs (a), (b), (c), and (d)
7 shall apply to irrevocable trusts created on or after July 1,
8 2007, which expressly authorize the trustee, by specific
9 reference to this subsection, to invest in investment
10 instruments owned or controlled by the trustee or its
11 affiliate.

12 3. For investment instruments other than qualified
13 investment instruments, paragraphs (a), (b), (c), and (d)
14 shall apply to irrevocable trusts created on or after July 1,
15 2007, that are not described in subparagraph 2. and to
16 irrevocable trusts created prior to July 1, 2007, only as
17 follows:

18 a. Such paragraphs shall not apply until ~~60 days after~~
19 the statement required in paragraph (f) is provided and a
20 majority of the qualified beneficiaries have provided written
21 consent. All consents must be obtained within 90 days after
22 the date of delivery of the written request. Once given,
23 consent shall be valid as to all investment instruments
24 acquired pursuant to the consent prior to the date of any
25 withdrawal of the consent ~~no objection is made or any~~
26 ~~objection which is made has been terminated.~~

27 ~~(I) An objection is made if, within 60 days after the~~
28 ~~date of the statement required in paragraph (f), a super~~
29 ~~majority of the eligible beneficiaries deliver to the trustee~~
30 ~~written objections to the application of this subsection to~~
31 ~~such trust. An objection shall be deemed to be delivered to~~

1 ~~the trustee on the date the objection is mailed to the mailing~~
2 ~~address listed in the notice provided in paragraph (f).~~

3 ~~(II) An objection is terminated upon the earlier of~~
4 ~~the receipt of consent from a super majority of eligible~~
5 ~~beneficiaries of the class that made the objection or the~~
6 ~~resolution of the objection pursuant to this subparagraph.~~

7 ~~(III) If an objection is delivered to the trustee, the~~
8 ~~trustee may petition the court for an order overruling the~~
9 ~~objection and authorizing the trustee to make investments~~
10 ~~under this subsection. The burden shall be on the trustee to~~
11 ~~show good cause for the relief sought.~~

12 ~~(I)(IV)~~ Any qualified beneficiary may petition the
13 court for an order to prohibit, limit, or restrict a trustee's
14 authority to make investments under this subsection. The
15 burden shall be upon the petitioning beneficiary to show good
16 cause for the relief sought.

17 ~~(II)(V)~~ The court may award costs and attorney's fees
18 relating to any petition under this subparagraph in the same
19 manner as in chancery actions. When costs and attorney's fees
20 are to be paid out of the trust, the court, in its discretion,
21 may direct from which part of the trust such costs and fees
22 shall be paid.

23 b. The consent objection of a majority of the
24 qualified ~~super majority of eligible~~ beneficiaries under this
25 subparagraph may ~~thereafter~~ be withdrawn prospectively ~~removed~~
26 by ~~the~~ written notice consent of a ~~super~~ majority of any one
27 of the class or classes of the qualified ~~those eligible~~
28 beneficiaries ~~that made the objection.~~

29 (f)1. The trustee of a trust described in s.
30 731.201(35) may request authority to invest in Any time prior
31 to initially investing in any investment instruments

1 ~~instrument~~ described in this subsection other than a qualified
2 investment instrument, ~~by providing the trustee of a trust~~
3 ~~described in subparagraph (c)3. shall provide~~ to all qualified
4 beneficiaries a written request statement containing the
5 following:

6 a. The name, telephone number, street address, and
7 mailing address of the trustee and of any individuals who may
8 be contacted for further information.

9 b. A statement that the investment or investments
10 cannot be made without the consent of a majority of each class
11 of the qualified beneficiaries, unless a super majority of the
12 eligible beneficiaries objects to the application of this
13 subsection to the trust within 60 days after the date the
14 statement pursuant to this subsection was delivered, this
15 subsection shall apply to the trust.

16 c. A statement that, if a majority of each class of
17 qualified beneficiaries consent this subsection applies to the
18 ~~trust~~, the trustee will have the right to make investments in
19 investment instruments, as defined in s. 660.25(6), which are
20 owned or controlled by the trustee or its affiliate, or from
21 which the trustee or its affiliate receives compensation for
22 providing services in a capacity other than as trustee, that
23 such investment instruments may include investment instruments
24 sold primarily to trust accounts, and that the trustee or its
25 affiliate may receive fees in addition to the trustee's
26 compensation for administering the trust.

27 d. A statement that the consent may be withdrawn
28 prospectively at any time by written notice given by a
29 majority of any class of the qualified beneficiaries.
30
31

1 A statement by the trustee is not delivered if the statement
2 is accompanied by another written communication other than a
3 written communication by the trustee that refers only to the
4 statement.

5 2. For purposes of paragraph (e) and this paragraph:

6 ~~a. "Eligible beneficiaries" means:~~

7 ~~(I) If at the time the determination is made there are~~
8 ~~one or more beneficiaries as described in s. 736.0103(14)(c),~~
9 ~~the beneficiaries described in s. 736.0103(14)(a) and (c); or~~

10 ~~(II) If there is no beneficiary described in s.~~
11 ~~736.0103(14)(c), the beneficiaries described in s.~~
12 ~~736.0103(14)(a) and (b).~~

13 a.b. "Super Majority of the qualified eligible
14 beneficiaries" means:

15 (I) If at the time the determination is made there are
16 one or more beneficiaries as described in s. 736.0103(14)(c),
17 at least a majority two-thirds in interest of the
18 beneficiaries described in s. 736.0103(14)(a), at least a
19 majority in interest of the beneficiaries described in s.
20 736.0103(14)(b), and at least a majority or two-thirds in
21 interest of the beneficiaries described in s. 736.0103(14)(c),
22 if the interests of the beneficiaries are reasonably
23 ascertainable; otherwise, a majority two-thirds in number of
24 each either such class; or

25 (II) If there is no beneficiary as described in s.
26 736.0103(14)(c), at least a majority two-thirds in interest of
27 the beneficiaries described in s. 736.0103(14)(a) and at least
28 a majority or two-thirds in interest of the beneficiaries
29 described in s. 736.0103(14)(b), if the interests of the
30 beneficiaries are reasonably ascertainable; otherwise, a
31 majority two-thirds in number of each either such class.

1 ~~b.e.~~ "Qualified investment instrument" means a mutual
2 fund, common trust fund, or money market fund described in and
3 governed by s. 736.0816(3).

4 ~~c.d.~~ An irrevocable trust is created upon execution of
5 the trust instrument. If a trust that was revocable when
6 created thereafter becomes irrevocable, the irrevocable trust
7 is created when the right of revocation terminates.

8 (g) Nothing in this chapter is intended to create or
9 imply a duty for the trustee to seek the application of this
10 subsection to invest in investment instruments described in
11 paragraph (a), and no inference of impropriety may be made as
12 a result of a trustee electing not to invest trust assets in
13 investment instruments described in paragraph (a).

14 (h) This subsection is not the exclusive authority
15 under this code for investing in investment instruments
16 described in paragraph (a). A trustee who invests trust funds
17 in investment instruments described in paragraph (a) is not
18 required to comply with paragraph (b), paragraph (c), or
19 paragraph (f) if the trustee is permitted to invest in such
20 investment instruments pursuant to subsection (2).

21 Section 4. Subsection (3) of section 736.0816, Florida
22 Statutes, is amended to read:

23 736.0816 Specific powers of trustee.--Except as
24 limited or restricted by this code, a trustee may:

25 (3) Acquire an undivided interest in a trust asset,
26 including, but not limited to, a money market mutual fund,
27 mutual fund, or common trust fund, in which asset the trustee
28 holds an undivided interest in any trust capacity, including
29 any money market or other mutual fund from which the trustee
30 or any affiliate or associate of the trustee is entitled to
31 receive reasonable compensation for providing necessary

1 services as an investment adviser, portfolio manager, or
2 servicing agent. A trustee or affiliate or associate of the
3 trustee may receive compensation for such services in addition
4 to fees received for administering the trust provided such
5 compensation is fully disclosed in writing to all qualified
6 beneficiaries. As used in this subsection, the term "mutual
7 fund" includes an open-end or closed-end management investment
8 company or investment trust registered under the Investment
9 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended.

10 Section 5. Subsection (6) of section 736.1008, Florida
11 Statutes, is amended to read:

12 736.1008 Limitations on proceedings against
13 trustees.--

14 (6) This section applies to trust accountings for
15 accounting periods beginning on or after July January 1, 2007
16 ~~2008~~, and to written reports, other than trust accountings,
17 received by a beneficiary on or after July January 1, 2007
18 ~~2008~~.

19 Section 6. Subsection (2) of section 736.1011, Florida
20 Statutes, is amended to read:

21 736.1011 Exculpation of trustee.--

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

25 (a) The trustee proves that the exculpatory term is
26 fair under the circumstances.

27 (b) ~~and that~~ The term's existence and contents were
28 adequately communicated directly to the settlor ~~or the~~
29 independent attorney of the settlor. This paragraph applies
30 only to trusts created on or after July 1, 2007.

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

5 689.071 Florida Land Trust Act.--

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

7 (d) "Land trust" ~~is not the creation of an entity, but~~
8 means any express written agreement or arrangement by which a
9 use, confidence, or trust is declared of any land, or of any
10 charge upon land, ~~for the use or benefit of any beneficiary,~~
11 under which the title to real property, both legal and
12 equitable, is vested in a trustee by a recorded instrument
13 that confers on the trustee the power and authority prescribed
14 in subsection (3). The recorded instrument does not itself
15 create an entity, regardless of whether the relationship among
16 the beneficiaries and the trustee is deemed to be an entity
17 under other applicable law held by a trustee, subject only to
18 the execution of the trust, which may be enforced by the
19 beneficiaries.

20 (3) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
21 deed, mortgage, lease assignment, or other instrument
22 heretofore or hereafter made, hereinafter referred to as the
23 ~~the~~ recorded instrument," transferring any interest in real
24 property in this state, including, but not limited to, a
25 leasehold or mortgagee interest, to any person or any
26 corporation, bank, trust company, or other entity duly formed
27 under the laws of its state of qualification, in which
28 recorded instrument the person, corporation, bank, trust
29 company, or other entity is designated "trustee," or "as
30 trustee," ~~without therein naming the beneficiaries of such~~
31 ~~trust,~~ whether or not reference is made in the recorded

1 | instrument to the beneficiaries of such trust or to any
2 | separate collateral unrecorded declarations or agreements, is
3 | effective to vest, and is hereby declared to have vested, in
4 | such trustee both legal and equitable title, and full rights
5 | of ownership, over the real property or interest therein, with
6 | full power and authority as granted and provided in the
7 | recorded instrument to deal in and with the property or
8 | interest therein or any part thereof; provided, the recorded
9 | instrument confers on the trustee the power and authority
10 | ~~either~~ to protect, to conserve, ~~and~~ to sell, ~~or~~ to lease, ~~or~~
11 | to encumber, or otherwise to manage and dispose of the real
12 | property described in the recorded instrument.

13 | (7) TRUSTEE LIABILITY.--In addition to any other
14 | limitation on personal liability existing pursuant to statute
15 | or otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~
16 | ~~736.1013~~ apply to the trustee of a land trust created pursuant
17 | to this section.

18 | (9) SUCCESSOR TRUSTEE.--

19 | (a) The provisions of s. 736.0705 ~~s. 737.309~~ relating
20 | to the resignation of a trustee do not apply to the
21 | appointment of a successor trustee under this section.

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

25 | 731.201 General definitions.--Subject to additional
26 | definitions in subsequent chapters that are applicable to
27 | specific chapters or parts, and unless the context otherwise
28 | requires, in this code, in s. 409.9101, and in chapters 736,
29 | 738, 739, and 744, the term:

30 | (35) "Trust" means an express trust, private or
31 | charitable, with additions to it, wherever and however

1 created. It also includes a trust created or determined by a
2 judgment or decree under which the trust is to be administered
3 in the manner of an express trust. "Trust" excludes other
4 constructive trusts, and it excludes resulting trusts;
5 conservatorships; custodial arrangements pursuant to the
6 Florida Uniform Transfers to Minors Act; business trusts
7 providing for certificates to be issued to beneficiaries;
8 common trust funds; land trusts under s. 689.071, except to
9 the extent provided in s. 689.071(7) ~~s. 689.05~~; trusts created
10 by the form of the account or by the deposit agreement at a
11 financial institution; voting trusts; security arrangements;
12 liquidation trusts; trusts for the primary purpose of paying
13 debts, dividends, interest, salaries, wages, profits,
14 pensions, or employee benefits of any kind; and any
15 arrangement under which a person is nominee or escrowee for
16 another.

17 Section 9. Section 731.303, Florida Statutes, as
18 amended by section 30 of chapter 2006-217, Laws of Florida, is
19 amended to read:

20 731.303 Representation.--In the administration of or
21 in judicial proceedings involving estates of decedents ~~or~~
22 ~~trusts~~, the following apply:

23 (1) Persons are bound by orders binding others in the
24 following cases:

25 (a)1. Orders binding the sole holder or all coholders
26 of a power of revocation or a general, special, or limited
27 power of appointment, including one in the form of a power of
28 amendment or revocation to the extent that the power has not
29 become unexercisable in fact, bind all persons to the extent
30 that their interests, as persons who may take by virtue of the
31

1 | exercise or nonexercise of the power, are subject to the
2 | power.

3 | 2. Subparagraph 1. does not apply to:

4 | a. Any matter determined by the court to involve fraud
5 | or bad faith by the trustee;

6 | b. A power of a trustee to distribute trust property;
7 | or

8 | c. A power of appointment held by a person while the
9 | person is the sole trustee.

10 | (b) To the extent there is no conflict of interest
11 | between them or among the persons represented:

12 | 1. Orders binding a guardian of the property bind the
13 | ward.

14 | 2. Orders binding a trustee bind beneficiaries of the
15 | trust in proceedings to probate a will, in establishing or
16 | adding to a trust, in reviewing the acts or accounts of a
17 | prior fiduciary, and in proceedings involving creditors or
18 | other third parties. However, for purposes of this section, a
19 | conflict of interest shall be deemed to exist when each
20 | trustee of a trust that is a beneficiary of the estate is also
21 | a personal representative of the estate.

22 | 3. Orders binding a personal representative bind
23 | persons interested in the undistributed assets of a decedent's
24 | estate, in actions or proceedings by or against the estate.

25 | (c) An unborn or unascertained person, or a minor or
26 | any other person under a legal disability, who is not
27 | otherwise represented is bound by an order to the extent that
28 | person's interest is represented by another party having the
29 | same or greater quality of interest in the proceeding.

30 | (2) Orders binding a guardian of the person shall not
31 | bind the ward.

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

3 (a) Notice as prescribed by law shall be given to
4 every interested person, or to one who can bind the interested
5 person as described in paragraph (1)(a) or paragraph (1)(b).
6 Notice may be given both to the interested person and to
7 another who can bind him or her.

8 (b) Notice is given to unborn or unascertained persons
9 who are not represented pursuant to paragraph (1)(a) or
10 paragraph (1)(b) by giving notice to all known persons whose
11 interests in the proceedings are the same as, or of a greater
12 quality than, those of the unborn or unascertained persons.

13 (4) If the court determines that representation of the
14 interest would otherwise be inadequate, the court may, at any
15 time, appoint a guardian ad litem to represent the interests
16 of an incapacitated person, an unborn or unascertained person,
17 a minor or any other person otherwise under a legal
18 disability, or a person whose identity or address is unknown.
19 If not precluded by conflict of interest, a guardian ad litem
20 may be appointed to represent several persons or interests.

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

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

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

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

1 Section 10. Section 736.0102, Florida Statutes, is
2 amended to read:

3 736.0102 Scope.--This code applies to express trusts,
4 charitable or noncharitable, and trusts created pursuant to a
5 law, judgment, or decree that requires the trust to be
6 administered in the manner of an express trust. This code does
7 not apply to constructive or resulting trusts;
8 conservatorships; custodial arrangements pursuant to the
9 Florida Uniform Transfers to Minors Act; business trusts
10 providing for certificates to be issued to beneficiaries;
11 common trust funds; land trusts under s. 689.071, except to
12 the extent provided in s. 689.071(7) ~~s. 689.05~~; trusts created
13 by the form of the account or by the deposit agreement at a
14 financial institution; voting trusts; security arrangements;
15 liquidation trusts; trusts for the primary purpose of paying
16 debts, dividends, interest, salaries, wages, profits,
17 pensions, or employee benefits of any kind; and any
18 arrangement under which a person is nominee or escrowee for
19 another.

20 Section 11. Section 736.0501, Florida Statutes, is
21 amended to read:

22 736.0501 Rights of beneficiary's creditor or
23 assignee.--~~Except as provided in s. 736.0504~~, to the extent a
24 beneficiary's interest is not subject to a spendthrift
25 provision, the court may authorize a creditor or assignee of
26 the beneficiary to reach the beneficiary's interest by
27 attachment of present or future distributions to or for the
28 benefit of the beneficiary or by other means. The court may
29 limit the award to such relief as is appropriate under the
30 circumstances.

31

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

3 736.0502 Spendthrift provision.--

4 (1) A spendthrift provision is valid only if the
5 provision restrains both voluntary and involuntary transfer of
6 a beneficiary's interest. This subsection does not apply to
7 any trust the terms of which are included in an instrument
8 executed before in existence on the effective date of this
9 code.

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

12 736.0503 Exceptions to spendthrift provision.--

13 (3) Except as otherwise provided in this subsection
14 and in s. 736.0504, a claimant against which a spendthrift
15 provision may not be enforced may obtain from a court, or
16 pursuant to the Uniform Interstate Family Support Act, an
17 order attaching present or future distributions to or for the
18 benefit of the beneficiary. The court may limit the award to
19 such relief as is appropriate under the circumstances.
20 Notwithstanding this subsection, the remedies provided in this
21 subsection apply to a claim by a beneficiary's child, spouse,
22 former spouse, or a judgment creditor described in paragraph
23 (2)(a) or paragraph (2)(b) only as a last resort upon an
24 initial showing that traditional methods of enforcing the
25 claim are insufficient.

26 Section 14. Section 736.0504, Florida Statutes, is
27 amended to read:

28 736.0504 Discretionary trusts; effect of standard.--

29 (1) As used in this section, the term "discretionary
30 distribution" means a distribution that is subject to the
31 trustee's discretion whether or not the discretion is

1 expressed in the form of a standard of distribution and
2 whether or not the trustee has abused the discretion.

3 (2) Whether or not a trust contains a spendthrift
4 provision, if a trustee may make discretionary distributions
5 to or for the benefit of a beneficiary, a creditor of the
6 beneficiary, including a creditor as described in s.
7 736.0503(2), may not:

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

10 (b) Attach or otherwise reach the interest, if any,
11 which the beneficiary might have as a result of the trustee's
12 authority to make discretionary distributions to or for the
13 benefit of the beneficiary. ~~Whether or not a trust contains a~~
14 ~~spendthrift provision, a creditor of a beneficiary may not~~
15 ~~compel a distribution that is subject to the trustee's~~
16 ~~discretion, even if:~~

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

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

20 (3)(2) If the trustee's discretion to make
21 distributions for the trustee's own benefit is limited by an
22 ascertainable standard, a creditor may not reach or compel
23 distribution of the beneficial interest except to the extent
24 the interest would be subject to the creditor's claim were the
25 beneficiary not acting as trustee.

26 (4)(3) This section does not limit the right of a
27 beneficiary to maintain a judicial proceeding against a
28 trustee for an abuse of discretion or failure to comply with a
29 standard for distribution.

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

1 736.0813 Duty to inform and account.--The trustee
2 shall keep the qualified beneficiaries of the trust reasonably
3 informed of the trust and its administration.

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

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

9 736.1106 Antilapse; survivorship with respect to
10 future interests under terms of inter vivos and testamentary
11 trusts; substitute takers.--

12 (5) Subsections (1) through (4) apply ~~This section~~
13 ~~applies~~ to all trusts other than trusts that were irrevocable
14 before the effective date of this code. Sections 732.603,
15 732.604, and 737.6035, as they exist on June 30, 2007,
16 continue to apply to other trusts executed on or after June
17 12, 2003.

18 Section 17. Subsection (4) of section 736.1204,
19 Florida Statutes, is amended to read:

20 736.1204 Powers and duties of trustee of a private
21 foundation trust or a split interest trust.--

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

24 (a) All the income interest ~~from income~~, and none of
25 the remainder interest, of the trust is devoted solely to one
26 or more of the purposes described in s. 170(c)(2)(B) of the
27 Internal Revenue Code, and all amounts in the trust for which
28 a deduction was allowed under s. 170, s. 545(b)(2), s.
29 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of
30 the Internal Revenue Code have an aggregate fair market value
31

1 of not more than 60 percent of the aggregate fair market value
2 of all amounts in the trust; or

3 (b) A deduction was allowed under s. 170, s.
4 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or
5 s. 2522 of the Internal Revenue Code for amounts payable under
6 the terms of the trust to every remainder beneficiary but not
7 to any income beneficiary.

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

10 736.1209 Election to come under this part.--With the
11 consent of that organization or organizations, a trustee of a
12 trust for the benefit of a public charitable organization or
13 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
14 filing with the state attorney an election, accompanied by the
15 proof of required consent. Thereafter the trust shall be
16 subject to s. 736.1208(5).

17 Section 19. Subsection (2) of section 736.1001,
18 Florida Statutes, is amended to read:

19 736.1001 Remedies for breach of trust.--

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

22 (a) Compel the trustee to perform the trustee's
23 duties;

24 (b) Enjoin the trustee from committing a breach of
25 trust;

26 (c) Compel the trustee to redress a breach of trust by
27 paying money or restoring property or by other means;

28 (d) Order a trustee to account;

29 (e) Appoint a special fiduciary to take possession of
30 the trust property and administer the trust;

31 (f) Suspend the trustee;

1 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~
2 ~~736.706~~;

3 (h) Reduce or deny compensation to the trustee;

4 (i) Subject to s. 736.1016, void an act of the
5 trustee, impose a lien or a constructive trust on trust
6 property, or trace trust property wrongfully disposed of and
7 recover the property or its proceeds; or

8 (j) Order any other appropriate relief.

9 Section 20. This act shall take effect July 1, 2007.

10
11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 CS for SB 2218

14 The committee substitute differs from the underlying committee
15 substitute in that it:

- 16 -- Revises the definition of the term "land trust";
- 17 -- Corrects cross-references;
- 18 -- Makes certain provisions of the Florida Probate Code
inapplicable to trusts;
- 19 -- Provides that a creditor of a beneficiary of a
20 discretionary trust may not compel a distribution from
the trust or reach a beneficiary's interest in the trust;
- 21 -- Makes the accounting provision in s. 736.0813(5), F.S.,
22 applicable on July 1, 2007, the effective date of the new
Florida Trust Code; and
- 23 -- Provides that certain anti-lapse statutes in effect
24 before the effective date of the new Florida Trust Code
continue to apply to certain preexisting trusts.