

By Senator Aronberg

27-766D-07

1                                   A bill to be entitled  
2           An act relating to the administration of  
3           trusts; amending s. 689.071, F.S.; limiting the  
4           definition of the term "land trust" to an  
5           arrangement in which title to real property is  
6           vested in a trustee by a recorded instrument  
7           that confers certain authority as prescribed by  
8           state law; providing that such a recorded  
9           instrument does not itself create an entity;  
10          providing that a recorded instrument is  
11          effective regardless of whether it refers to  
12          beneficiaries of the trust; providing that a  
13          recorded instrument vests both legal and  
14          equitable title to real property or the  
15          interest therein in the trustee; conforming  
16          cross-references; amending s. 731.201, F.S.;  
17          redefining the term "trust"; conforming a  
18          cross-reference; amending s. 731.303, F.S.;  
19          excluding trusts from guidelines regarding  
20          administration and judicial proceedings;  
21          amending s. 736.0102, F.S.; conforming a  
22          cross-reference; amending s. 736.0501, F.S.;  
23          limiting the ability of creditors or assignees  
24          of a beneficiary to reach the beneficiary's  
25          interest in a trust; amending s. 736.0502,  
26          F.S.; clarifying the application of  
27          restrictions on transferring a beneficiary's  
28          interest under a spendthrift provision;  
29          amending s. 736.0503, F.S.; providing an  
30          exception to a provision authorizing the  
31          attachment of trust distributions; amending s.

1 736.0504, F.S.; defining the term  
2 "discretionary distribution"; prohibiting  
3 certain creditors from compelling distributions  
4 or attaching a beneficiary's interest or  
5 expectancy; amending ss. 736.0813 and 736.1008,  
6 F.S.; conforming dates of applicability of the  
7 accounting provision and corresponding  
8 limitations to the effective date of the code;  
9 amending s. 736.1011, F.S.; providing that  
10 direct communication of exculpatory terms to  
11 the trust settlor is required only for trusts  
12 created on or after July 1, 2007; amending s.  
13 736.1106, F.S.; providing that certain  
14 antilapse provisions continue to apply to  
15 irrevocable trusts created between June 12,  
16 2003, and July 1, 2007; amending s. 736.1204,  
17 F.S.; clarifying the use of income interest of  
18 a trust; amending ss. 736.1209 and 736.1001,  
19 F.S., relating to the release of power by a  
20 trustee and removal of a trustee; conforming  
21 cross-references; providing an effective date.

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

24  
25 Section 1. Paragraph (d) of subsection (2),  
26 subsections (3) and (7), and paragraph (a) of subsection (9)  
27 of section 689.071, Florida Statutes, as amended by section 21  
28 of chapter 2006-217, Laws of Florida, are amended to read:

29 689.071 Florida Land Trust Act.--

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

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

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

1 recorded instrument to deal in and with the property or  
2 interest therein or any part thereof; provided, the recorded  
3 instrument confers on the trustee the power and authority  
4 ~~either~~ to protect, to conserve, ~~and~~ to sell, ~~or~~ to lease, ~~or~~  
5 to encumber, or otherwise to manage and dispose of the real  
6 property described in the recorded instrument.

7 (7) TRUSTEE LIABILITY.--In addition to any other  
8 limitation on personal liability existing pursuant to statute  
9 or otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~  
10 ~~736.1013~~ apply to the trustee of a land trust created pursuant  
11 to this section.

12 (9) SUCCESSOR TRUSTEE.--

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

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

19 731.201 General definitions.--Subject to additional  
20 definitions in subsequent chapters that are applicable to  
21 specific chapters or parts, and unless the context otherwise  
22 requires, in this code, in s. 409.9101, and in chapters 737,  
23 738, 739, and 744, the term:

24 (35) "Trust" means an express trust, private or  
25 charitable, with additions to it, wherever and however  
26 created. It also includes a trust created or determined by a  
27 judgment or decree under which the trust is to be administered  
28 in the manner of an express trust. "Trust" excludes other  
29 constructive trusts, and it excludes resulting trusts;  
30 conservatorships; custodial arrangements pursuant to the  
31 Florida Uniform Transfers to Minors Act; business trusts

1 providing for certificates to be issued to beneficiaries;  
2 common trust funds; land trusts under s. 689.071, except to  
3 the extent provided in s. 689.071(7) ~~s. 689.05~~; trusts created  
4 by the form of the account or by the deposit agreement at a  
5 financial institution; voting trusts; security arrangements;  
6 liquidation trusts; trusts for the primary purpose of paying  
7 debts, dividends, interest, salaries, wages, profits,  
8 pensions, or employee benefits of any kind; and any  
9 arrangement under which a person is nominee or escrowee for  
10 another.

11 Section 3. Section 731.303, Florida Statutes, is  
12 amended to read:

13 731.303 Representation.--In the administration of or  
14 in judicial proceedings involving estates of decedents ~~or~~  
15 ~~trusts~~, the following apply:

16 (1) Persons are bound by orders binding others in the  
17 following cases:

18 (a)1. Orders binding the sole holder or all coholders  
19 of a power of revocation or a general, special, or limited  
20 power of appointment, including one in the form of a power of  
21 amendment or revocation to the extent that the power has not  
22 become unexercisable in fact, bind all persons to the extent  
23 that their interests, as persons who may take by virtue of the  
24 exercise or nonexercise of the power, are subject to the  
25 power.

26 2. Subparagraph 1. does not apply to:

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

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

30 or

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1           c. A power of appointment held by a person while the  
2 person is the sole trustee.

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

5           1. Orders binding a guardian of the property bind the  
6 ward.

7           2. Orders binding a trustee bind beneficiaries of the  
8 trust in proceedings to probate a will, in establishing or  
9 adding to a trust, in reviewing the acts or accounts of a  
10 prior fiduciary, and in proceedings involving creditors or  
11 other third parties. However, for purposes of this section, a  
12 conflict of interest shall be deemed to exist when each  
13 trustee of a trust that is a beneficiary of the estate is also  
14 a personal representative of the estate.

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

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

23           (2) Orders binding a guardian of the person shall not  
24 bind the ward.

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

27           (a) Notice as prescribed by law shall be given to  
28 every interested person, or to one who can bind the interested  
29 person as described in paragraph (1)(a) or paragraph (1)(b).  
30 Notice may be given both to the interested person and to  
31 another who can bind him or her.

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

6           (4) If the court determines that representation of the  
7 interest would otherwise be inadequate, the court may, at any  
8 time, appoint a guardian ad litem to represent the interests  
9 of an incapacitated person, an unborn or unascertained person,  
10 a minor or any other person otherwise under a legal  
11 disability, or a person whose identity or address is unknown.  
12 If not precluded by conflict of interest, a guardian ad litem  
13 may be appointed to represent several persons or interests.

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

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

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

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

25           Section 4. Section 736.0102, Florida Statutes, is  
26 amended to read:

27           736.0102 Scope.--This code applies to express trusts,  
28 charitable or noncharitable, and trusts created pursuant to a  
29 law, judgment, or decree that requires the trust to be  
30 administered in the manner of an express trust. This code does  
31 not apply to constructive or resulting trusts;

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

13 Section 5. Section 736.0501, Florida Statutes, is  
14 amended to read:

15 736.0501 Rights of beneficiary's creditor or  
16 assignee.--Except as provided in s. 736.0504, to the extent a  
17 beneficiary's interest is not subject to a spendthrift  
18 provision, the court may authorize a creditor or assignee of  
19 the beneficiary to reach the beneficiary's interest by  
20 attachment of present or future distributions to or for the  
21 benefit of the beneficiary or by other means. The court may  
22 limit the award to such relief as is appropriate under the  
23 circumstances.

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

26 736.0502 Spendthrift provision.--

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

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

5 736.0503 Exceptions to spendthrift provision.--

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

19 Section 8. Section 736.0504, Florida Statutes, is  
20 amended to read:

21 736.0504 Discretionary trusts; effect of standard.--

22 (1) As used in this section, the term "discretionary  
23 distribution" means a distribution that is subject to the  
24 trustee's discretion whether or not the discretion is  
25 expressed in the form of a standard of distribution and  
26 whether or not the trustee has abused the discretion. ~~Whether~~  
27 ~~or not a trust contains a spendthrift provision, a creditor of~~  
28 ~~a beneficiary may not compel a distribution that is subject to~~  
29 ~~the trustee's discretion, even if:~~

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

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

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

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

9           (b) Attach or otherwise reach the interest, if any,  
10 which the beneficiary might have as a result of the trustee's  
11 authority to make discretionary distributions to or for the  
12 benefit of the beneficiary.

13           ~~(3)(2)~~ If the trustee's discretion to make  
14 distributions for the trustee's own benefit is limited by an  
15 ascertainable standard, a creditor may not reach or compel  
16 distribution of the beneficial interest except to the extent  
17 the interest would be subject to the creditor's claim were the  
18 beneficiary not acting as trustee.

19           ~~(4)(3)~~ This section does not limit the right of a  
20 beneficiary to maintain a judicial proceeding against a  
21 trustee for an abuse of discretion or failure to comply with a  
22 standard for distribution.

23           Section 9. Subsection (5) of section 736.0813, Florida  
24 Statutes, is amended to read:

25           736.0813 Duty to inform and account.--The trustee  
26 shall keep the qualified beneficiaries of the trust reasonably  
27 informed of the trust and its administration.

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

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

3 736.1008 Limitations on proceedings against  
4 trustees.--

5 (6) This section applies to trust accountings for  
6 accounting periods beginning on or after July 1, 2007 ~~January~~  
7 ~~1, 2008~~, and to written reports, other than trust accountings,  
8 received by a beneficiary on or after July 1, 2007 ~~January 1,~~  
9 ~~2008~~.

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

12 736.1011 Exculpation of trustee.--

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

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

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

21 Section 12. Subsection (5) of section 736.1106,  
22 Florida Statutes, is amended to read:

23 736.1106 Antilapse; survivorship with respect to  
24 future interests under terms of inter vivos and testamentary  
25 trusts; substitute takers.--

26 (5) Subsections (1) through (4) apply ~~This section~~  
27 ~~applies~~ to all trusts other than trusts that were irrevocable  
28 before the effective date of this code. Sections 732.603,  
29 732.604, and 737.6035, as they exist on June 30, 2007,  
30 continue to apply to other trusts executed on or after June  
31 12, 2003.

1           Section 13. Subsection (4) of section 736.1204,  
2 Florida Statutes, is amended to read:

3           736.1204 Powers and duties of trustee of a private  
4 foundation trust or a split interest trust.--

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

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

16           (b) A deduction was allowed under s. 170, s.  
17 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or  
18 s. 2522 of the Internal Revenue Code for amounts payable under  
19 the terms of the trust to every remainder beneficiary but not  
20 to any income beneficiary.

21           Section 14. Section 736.1209, Florida Statutes, is  
22 amended to read:

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

30           Section 15. Subsection (2) of section 736.1001,  
31 Florida Statutes, is amended to read:

1           736.1001 Remedies for breach of trust.--  
2           (2) To remedy a breach of trust that has occurred or  
3 may occur, the court may:  
4           (a) Compel the trustee to perform the trustee's  
5 duties;  
6           (b) Enjoin the trustee from committing a breach of  
7 trust;  
8           (c) Compel the trustee to redress a breach of trust by  
9 paying money or restoring property or by other means;  
10           (d) Order a trustee to account;  
11           (e) Appoint a special fiduciary to take possession of  
12 the trust property and administer the trust;  
13           (f) Suspend the trustee;  
14           (g) Remove the trustee as provided in s. 736.0706 ~~s.~~  
15 ~~736.706~~;  
16           (h) Reduce or deny compensation to the trustee;  
17           (i) Subject to s. 736.1016, void an act of the  
18 trustee, impose a lien or a constructive trust on trust  
19 property, or trace trust property wrongfully disposed of and  
20 recover the property or its proceeds; or  
21           (j) Order any other appropriate relief.  
22           Section 16. This act shall take effect July 1, 2007.  
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SENATE SUMMARY

Limits the definition of "land trust" to an arrangement in which title to real property is vested in a trustee by a recorded instrument that confers certain authority as prescribed by state law. Provides that such a recorded instrument does not itself create an entity. Provides that a recorded instrument is effective regardless of whether it refers to beneficiaries of the trust. Provides that a recorded instrument vests both legal and equitable title to real property or the interest therein in the trustee. Limits the ability of creditors or assignees of a beneficiary to reach the beneficiary's interest in a trust. Extends the grandfathering of testamentary trusts to include those created in wills executed before a certain date under specified conditions. Provides that the rights given to exception creditors are subservient to the protection given to beneficiaries of discretionary trusts. Defines the term "discretionary distribution." Provides protection to discretionary interests from the ability of exception creditors to compel distributions or attach a beneficiary's interest or expectancy. Provides that direct communication of exculpatory terms to the trust settlor is required only for trusts created on or after a certain date. Provides that existing antilapse provisions continue to apply to irrevocable trusts created within a specified period. Conforms dates of applicability of the accounting provision and corresponding limitations to the effective date of the trust code. Restores previously codified wording to certain sections of the code.