

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative(s) Hukill offered the following:

2  
3 **Amendment (with and title amendment)**

4 Between lines 373 and 374, insert:

5 Section 7. Paragraph (d) of subsection (2), subsections  
6 (3) and (7), and paragraph (a) of subsection (9) of section  
7 689.071, Florida Statutes, as amended by section 21 of chapter  
8 2006-217, Laws of Florida, are amended to read:

9 689.071 Florida Land Trust Act.--

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

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

24 |       (3) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance, deed,  
25 | mortgage, lease assignment, or other instrument heretofore or  
26 | hereafter made, hereinafter referred to as the "~~the~~ recorded  
27 | instrument," transferring any interest in real property in this  
28 | state, including, but not limited to, a leasehold or mortgagee  
29 | interest, to any person or any corporation, bank, trust company,  
30 | or other entity duly formed under the laws of its state of  
31 | qualification, in which recorded instrument the person,  
32 | corporation, bank, trust company, or other entity is designated  
33 | "trustee," or "as trustee," ~~without therein naming the~~  
34 | ~~beneficiaries of such trust,~~ whether or not reference is made in  
35 | the recorded instrument to the beneficiaries of such trust or to  
36 | any separate collateral unrecorded declarations or agreements,  
37 | is effective to vest, and is hereby declared to have vested, in  
38 | such trustee both legal and equitable title, and full rights of  
39 | ownership, over the real property or interest therein, with full  
40 | power and authority as granted and provided in the recorded  
41 | instrument to deal in and with the property or interest therein  
42 | or any part thereof; provided, the recorded instrument confers  
43 | on the trustee the power and authority either to protect, to  
44 | conserve, and to sell, or to lease, or to encumber, or otherwise  
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45 | to manage and dispose of the real property described in the  
46 | recorded instrument.

47 |       (7) TRUSTEE LIABILITY.--In addition to any other  
48 | limitation on personal liability existing pursuant to statute or  
49 | otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s.~~  
50 | ~~736.1013~~ apply to the trustee of a land trust created pursuant  
51 | to this section.

52 |       (9) SUCCESSOR TRUSTEE.--

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

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

59 |       731.201 General definitions.--Subject to additional  
60 | definitions in subsequent chapters that are applicable to  
61 | specific chapters or parts, and unless the context otherwise  
62 | requires, in this code, in s. 409.9101, and in chapters 736,  
63 | 738, 739, and 744, the term:

64 |       (35) "Trust" means an express trust, private or  
65 | charitable, with additions to it, wherever and however created.  
66 | It also includes a trust created or determined by a judgment or  
67 | decree under which the trust is to be administered in the manner  
68 | of an express trust. "Trust" excludes other constructive trusts,  
69 | and it excludes resulting trusts; conservatorships; custodial  
70 | arrangements pursuant to the Florida Uniform Transfers to Minors  
71 | Act; business trusts providing for certificates to be issued to  
72 | beneficiaries; common trust funds; land trusts under s. 689.071,  
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73 | except to the extent provided in s. 689.071(7) ~~689.05~~; trusts  
74 | created by the form of the account or by the deposit agreement  
75 | at a financial institution; voting trusts; security  
76 | arrangements; liquidation trusts; trusts for the primary purpose  
77 | of paying debts, dividends, interest, salaries, wages, profits,  
78 | pensions, or employee benefits of any kind; and any arrangement  
79 | under which a person is nominee or escrowee for another.

80 |       Section 9. Section 731.303, Florida Statutes, as amended  
81 | by section 30 of chapter 2006-217, Laws of Florida, is amended  
82 | to read:

83 |       731.303 Representation.--In the administration of or in  
84 | judicial proceedings involving estates of decedents ~~or trusts~~,  
85 | the following apply:

86 |       (1) Persons are bound by orders binding others in the  
87 | following cases:

88 |       (a)1. Orders binding the sole holder or all coholders of a  
89 | power of revocation or a general, special, or limited power of  
90 | appointment, including one in the form of a power of amendment  
91 | or revocation to the extent that the power has not become  
92 | unexercisable in fact, bind all persons to the extent that their  
93 | interests, as persons who may take by virtue of the exercise or  
94 | nonexercise of the power, are subject to the power.

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

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

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

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

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

103 1. Orders binding a guardian of the property bind the  
104 ward.

105 2. Orders binding a trustee bind beneficiaries of the  
106 trust in proceedings to probate a will, in establishing or  
107 adding to a trust, in reviewing the acts or accounts of a prior  
108 fiduciary, and in proceedings involving creditors or other third  
109 parties. However, for purposes of this section, a conflict of  
110 interest shall be deemed to exist when each trustee of a trust  
111 that is a beneficiary of the estate is also a personal  
112 representative of the estate.

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

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

121 (2) Orders binding a guardian of the person shall not bind  
122 the ward.

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

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

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128 | be given both to the interested person and to another who can  
129 | bind him or her.

130 |       (b) Notice is given to unborn or unascertained persons who  
131 | are not represented pursuant to paragraph (1) (a) or paragraph  
132 | (1) (b) by giving notice to all known persons whose interests in  
133 | the proceedings are the same as, or of a greater quality than,  
134 | those of the unborn or unascertained persons.

135 |       (4) If the court determines that representation of the  
136 | interest would otherwise be inadequate, the court may, at any  
137 | time, appoint a guardian ad litem to represent the interests of  
138 | an incapacitated person, an unborn or unascertained person, a  
139 | minor or any other person otherwise under a legal disability, or  
140 | a person whose identity or address is unknown. If not precluded  
141 | by conflict of interest, a guardian ad litem may be appointed to  
142 | represent several persons or interests.

143 |       (5) The holder of a power of appointment over property not  
144 | held in trust may represent and bind persons whose interests, as  
145 | permissible appointees, takers in default, or otherwise, are  
146 | subject to the power. Representation under this subsection does  
147 | not apply to:

148 |       (a) Any matter determined by the court to involve fraud or  
149 | bad faith by the trustee;

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

151 |       (c) A power of appointment held by a person while the  
152 | person is the sole trustee.

153 |       Section 10. Section 736.0102, Florida Statutes, is amended  
154 | to read:

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155           736.0102 Scope.--This code applies to express trusts,  
156 charitable or noncharitable, and trusts created pursuant to a  
157 law, judgment, or decree that requires the trust to be  
158 administered in the manner of an express trust. This code does  
159 not apply to constructive or resulting trusts; conservatorships;  
160 custodial arrangements pursuant to the Florida Uniform Transfers  
161 to Minors Act; business trusts providing for certificates to be  
162 issued to beneficiaries; common trust funds; land trusts under  
163 s. 689.071, except to the extent provided in s. 689.071(7) s-  
164 ~~689.05~~; trusts created by the form of the account or by the  
165 deposit agreement at a financial institution; voting trusts;  
166 security arrangements; liquidation trusts; trusts for the  
167 primary purpose of paying debts, dividends, interest, salaries,  
168 wages, profits, pensions, or employee benefits of any kind; and  
169 any arrangement under which a person is nominee or escrowee for  
170 another.

171           Section 11. Section 736.0501, Florida Statutes, is amended  
172 to read:

173           736.0501 Rights of beneficiary's creditor or  
174 assignee.--Except as provided in s. 736.0504, to the extent a  
175 beneficiary's interest is not subject to a spendthrift  
176 provision, the court may authorize a creditor or assignee of the  
177 beneficiary to reach the beneficiary's interest by attachment of  
178 present or future distributions to or for the benefit of the  
179 beneficiary or by other means. The court may limit the award to  
180 such relief as is appropriate under the circumstances.

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

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183 736.0502 Spendthrift provision.--

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

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

191 736.0503 Exceptions to spendthrift provision.--

192 (3) Except as otherwise provided in this subsection and in  
193 s. 736.0504, a claimant against which a spendthrift provision  
194 may not be enforced may obtain from a court, or pursuant to the  
195 Uniform Interstate Family Support Act, an order attaching  
196 present or future distributions to or for the benefit of the  
197 beneficiary. The court may limit the award to such relief as is  
198 appropriate under the circumstances. Notwithstanding this  
199 subsection, the remedies provided in this subsection apply to a  
200 claim by a beneficiary's child, spouse, former spouse, or a  
201 judgment creditor described in paragraph (2) (a) or paragraph  
202 (2) (b) only as a last resort upon an initial showing that  
203 traditional methods of enforcing the claim are insufficient.

204 Section 14. Section 736.0504, Florida Statutes, is amended  
205 to read:

206 736.0504 Discretionary trusts; effect of standard.--

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

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

212 (2) Whether or not a trust contains a spendthrift  
213 provision, if a trustee may make discretionary distributions to  
214 or for the benefit of a beneficiary, a creditor of the  
215 beneficiary, including a creditor as described in s.  
216 736.0503(2), may not:

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

219 (b) Attach or otherwise reach the interest, if any, which  
220 the beneficiary might have as a result of the trustee's  
221 authority to make discretionary distributions to or for the  
222 benefit of the beneficiary. ~~Whether or not a trust contains a~~  
223 ~~spendthrift provision, a creditor of a beneficiary may not~~  
224 ~~compel a distribution that is subject to the trustee's~~  
225 ~~discretion, even if:~~

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

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

229 (3)-(2) If the trustee's discretion to make distributions  
230 for the trustee's own benefit is limited by an ascertainable  
231 standard, a creditor may not reach or compel distribution of the  
232 beneficial interest except to the extent the interest would be  
233 subject to the creditor's claim were the beneficiary not acting  
234 as trustee.

235 (4)-(3) This section does not limit the right of a  
236 beneficiary to maintain a judicial proceeding against a trustee

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237 | for an abuse of discretion or failure to comply with a standard  
238 | for distribution.

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

241 |       736.0813 Duty to inform and account.--The trustee shall  
242 | keep the qualified beneficiaries of the trust reasonably  
243 | informed of the trust and its administration.

244 |       (5) This section applies to trust accountings rendered for  
245 | accounting periods beginning on or after July 1, 2007 ~~January 1,~~  
246 | ~~2008~~.

247 |       Section 16. Subsection (5) of section 736.1106, Florida  
248 | Statutes, is amended to read:

249 |       736.1106 Antilapse; survivorship with respect to future  
250 | interests under terms of inter vivos and testamentary trusts;  
251 | substitute takers.--

252 |       (5) Subsections (1) through (4) apply ~~This section applies~~  
253 | to all trusts other than trusts that were irrevocable before the  
254 | effective date of this code. Sections 732.603, 732.604, and  
255 | 737.6035, as they exist on June 30, 2007, continue to apply to  
256 | other trusts executed on or after June 12, 2003.

257 |       Section 17. Paragraph (a) of subsection (4) of section  
258 | 736.1204, Florida Statutes, is amended to read:

259 |       736.1204 Powers and duties of trustee of a private  
260 | foundation trust or a split interest trust.--

261 |       (4) Paragraphs (3)(b) and (c) shall not apply to a split  
262 | interest trust if:

263 |       (a) All the income interest ~~from income~~, and none of the  
264 | remainder interest, of the trust is devoted solely to one or

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265 more of the purposes described in s. 170(c)(2)(B) of the  
266 Internal Revenue Code, and all amounts in the trust for which a  
267 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),  
268 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal  
269 Revenue Code have an aggregate fair market value of not more  
270 than 60 percent of the aggregate fair market value of all  
271 amounts in the trust; or

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

274 736.1209 Election to come under this part.--With the  
275 consent of that organization or organizations, a trustee of a  
276 trust for the benefit of a public charitable organization or  
277 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by  
278 filing with the state attorney an election, accompanied by the  
279 proof of required consent. Thereafter the trust shall be subject  
280 to s. 736.1208(5).

281 Section 19. Paragraph (g) of subsection (2) of section  
282 736.1001, Florida Statutes, is amended to read:

283 736.1001 Remedies for breach of trust.--

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

286 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~  
287 ~~736.706~~;

288

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

290 Remove line(s) 21 and insert:

291 instrument; amending s. 689.071, F.S.; limiting the definition  
292 of the term "land trust" to an arrangement in which title to  
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293 | real property is vested in a trustee by a recorded instrument  
294 | that confers certain authority as prescribed by state law;  
295 | providing that such a recorded instrument does not itself create  
296 | an entity; providing that a recorded instrument is effective  
297 | regardless of whether it refers to beneficiaries of the trust;  
298 | providing that a recorded instrument vests both legal and  
299 | equitable title to real property or the interest therein in the  
300 | trustee; conforming cross-references; amending s. 731.201, F.S.;  
301 | revising a definition; amending s. 731.303, F.S.; excluding  
302 | trusts from guidelines regarding administration and judicial  
303 | proceedings; amending s. 736.0102, F.S.; conforming a cross-  
304 | reference; amending s. 736.0501, F.S.; limiting the ability of  
305 | creditors or assignees of a beneficiary to reach the  
306 | beneficiary's interest in a trust; amending s. 736.0502, F.S.;  
307 | clarifying the application of restrictions on transferring a  
308 | beneficiary's interest under a spendthrift provision; amending  
309 | s. 736.0503, F.S.; providing an exception to a provision  
310 | authorizing the attachment of trust distributions; amending s.  
311 | 736.0504, F.S.; defining the term "discretionary distribution";  
312 | prohibiting certain creditors from compelling distributions or  
313 | attaching a beneficiary's interest or expectancy; amending s.  
314 | 736.0813, F.S.; conforming a date of applicability of the  
315 | accounting provision and corresponding limitations to the  
316 | effective date of the code; amending s. 736.1106, F.S.;  
317 | providing that certain antilapse provisions continue to apply to  
318 | irrevocable trusts created between June 12, 2003, and July 1,  
319 | 2007; amending s. 736.1204, F.S.; clarifying the use of income  
320 | interest of a trust; amending ss. 736.1209 and 736.1001, F.S.,  
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**(LATE FILED)**

HOUSE AMENDMENT

Bill No. CS/HB 743

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321 relating to the release of power by a trustee and removal of a  
322 trustee; conforming cross-references; providing an effective  
323 date.

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