

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

29 | that a recorded instrument vests both legal and equitable
30 | title to real property or the interest therein in the
31 | trustee; conforming cross-references; amending s. 731.201,
32 | F.S.; revising a definition; amending s. 731.303, F.S.;
33 | excluding trusts from guidelines regarding administration
34 | and judicial proceedings; amending s. 736.0102, F.S.;
35 | conforming a cross-reference; amending s. 736.0501, F.S.;
36 | limiting the ability of creditors or assignees of a
37 | beneficiary to reach the beneficiary's interest in a
38 | trust; amending s. 736.0502, F.S.; clarifying the
39 | application of restrictions on transferring a
40 | beneficiary's interest under a spendthrift provision;
41 | amending s. 736.0503, F.S.; providing an exception to a
42 | provision authorizing the attachment of trust
43 | distributions; amending s. 736.0504, F.S.; defining the
44 | term "discretionary distribution"; prohibiting certain
45 | creditors from compelling distributions or attaching a
46 | beneficiary's interest or expectancy; amending s.
47 | 736.0813, F.S.; conforming a date of applicability of the
48 | accounting provision and corresponding limitations to the
49 | effective date of the code; amending s. 736.1106, F.S.;
50 | providing that certain antilapse provisions continue to
51 | apply to irrevocable trusts created between June 12, 2003,
52 | and July 1, 2007; amending s. 736.1204, F.S.; clarifying
53 | the use of income interest of a trust; amending ss.
54 | 736.1209 and 736.1001, F.S., relating to the release of
55 | power by a trustee and removal of a trustee; conforming
56 | cross-references; providing an effective date.

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

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

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

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

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

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

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

2. If sold to other customers, are not sold to the trust accounts ~~fiduciary~~ upon terms that are less ~~not more~~ favorable

85 to the buyer than the terms upon which they are normally sold to
 86 the other customers ~~accounts for which the bank or trust company~~
 87 ~~is acting as a fiduciary.~~

88 Section 2. Section 736.04117, Florida Statutes, is created
 89 to read:

90 736.04117 Trustee's power to invade principal in trust.--

91 (1) (a) Unless the trust instrument expressly provides
 92 otherwise, a trustee who has absolute power under the terms of a
 93 trust to invade the principal of the trust, referred to in this
 94 section as the "first trust," to make distributions to or for
 95 the benefit of one or more persons may instead exercise the
 96 power by appointing all or part of the principal of the trust
 97 subject to the power in favor of a trustee of another trust,
 98 referred to in this section as the "second trust," for the
 99 current benefit of one or more of such persons under the same
 100 trust instrument or under a different trust instrument;
 101 provided:

102 1. The beneficiaries of the second trust may include only
 103 beneficiaries of the first trust;

104 2. The second trust may not reduce any fixed income,
 105 annuity, or unitrust interest in the assets of the first trust;
 106 and

107 3. If any contribution to the first trust qualified for a
 108 marital or charitable deduction for federal income, gift, or
 109 estate tax purposes under the Internal Revenue Code of 1986, as
 110 amended, the second trust shall not contain any provision which,
 111 if included in the first trust, would have prevented the first

112 trust from qualifying for such a deduction or would have reduced
113 the amount of such deduction.

114 (b) For purposes of this subsection, an absolute power to
115 invade principal shall include a power to invade principal that
116 is not limited to specific or ascertainable purposes, such as
117 health, education, maintenance, and support, whether or not the
118 term "absolute" is used. A power to invade principal for
119 purposes such as best interests, welfare, comfort, or happiness
120 shall constitute an absolute power not limited to specific or
121 ascertainable purposes.

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

126 (3) The exercise of a power to invade principal under
127 subsection (1) shall be considered the exercise of a power of
128 appointment, other than a power to appoint to the trustee, the
129 trustee's creditors, the trustee's estate, or the creditors of
130 the trustee's estate, and shall be subject to the provisions of
131 s. 689.225 covering the time at which the permissible period of
132 the rule against perpetuities begins and the law that determines
133 the permissible period of the rule against perpetuities of the
134 first trust.

135 (4) The trustee shall notify all qualified beneficiaries
136 of the first trust, in writing, at least 60 days prior to the
137 effective date of the trustee's exercise of the trustee's power
138 to invade principal pursuant to subsection (1), of the manner in
139 which the trustee intends to exercise the power. A copy of the

140 proposed instrument exercising the power shall satisfy the
141 trustee's notice obligation under this subsection. If all
142 qualified beneficiaries waive the notice period by signed
143 written instrument delivered to the trustee, the trustee's power
144 to invade principal shall be exercisable immediately. The
145 trustee's notice under this subsection shall not limit the right
146 of any beneficiary to object to the exercise of the trustee's
147 power to invade principal except as provided in other applicable
148 provisions of this code.

149 (5) The exercise of the power to invade principal under
150 subsection (1) is not prohibited by a spendthrift clause or by a
151 provision in the trust instrument that prohibits amendment or
152 revocation of the trust.

153 (6) Nothing in this section is intended to create or imply
154 a duty to exercise a power to invade principal and no inference
155 of impropriety shall be made as a result of a trustee not
156 exercising the power to invade principal conferred under
157 subsection (1).

158 (7) The provisions of this section shall not be construed
159 to abridge the right of any trustee who has a power of invasion
160 to appoint property in further trust that arises under the terms
161 of the first trust or under any other section of this code or
162 under another provision of law or under common law.

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

165 736.0802 Duty of loyalty.--

166 (2) Subject to the rights of persons dealing with or
167 assisting the trustee as provided in s. 736.1016, a sale,

168 | encumbrance, or other transaction involving the investment or
 169 | management of trust property entered into by the trustee for the
 170 | trustee's own personal account or which is otherwise affected by
 171 | a conflict between the trustee's fiduciary and personal
 172 | interests is voidable by a beneficiary affected by the
 173 | transaction unless:

174 | (a) The transaction was authorized by the terms of the
 175 | trust;

176 | (b) The transaction was approved by the court;

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

179 | (d) The beneficiary consented to the trustee's conduct,
 180 | ratified the transaction, or released the trustee in compliance
 181 | with s. 736.1012;

182 | (e) The transaction involves a contract entered into or
 183 | claim acquired by the trustee when that person had not become or
 184 | contemplated becoming trustee; ~~or~~

185 | (f) The transaction was consented to in writing by a
 186 | settlor of the trust while the trust was revocable; or

187 | (g) The transaction is one by a corporate trustee that
 188 | involves a money market mutual fund, mutual fund, or a common
 189 | trust fund described in s. 736.0816(3).

190 | (5) (a) An investment by a trustee authorized by lawful
 191 | authority to engage in trust business, as defined in s.
 192 | 658.12(20), in investment instruments, as defined in s.
 193 | 660.25(6), that are owned or controlled by the trustee or its
 194 | affiliate, or from which the trustee or its affiliate receives
 195 | compensation for providing services in a capacity other than as

196 trustee, is not presumed to be affected by a conflict between
 197 personal and fiduciary interests provided the investment
 198 otherwise complies with chapters 518 and 660 and the trustee
 199 complies with the ~~disclosure~~ requirements of this subsection.

200 (b) A trustee who, pursuant to this subsection, invests
 201 trust funds in investment instruments that are owned or
 202 controlled by the trustee or its affiliate shall disclose the
 203 following to all qualified beneficiaries:

204 1. Notice that the trustee has invested trust funds in
 205 investment instruments owned or controlled by the trustee or its
 206 affiliate.

207 2. The identity of the investment instruments.

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

210 (c) A trustee who, pursuant to this subsection, invests
 211 trust funds in investment instruments with respect to which the
 212 trustee or its affiliate receives compensation for providing
 213 services in a capacity other than as trustee shall disclose to
 214 all qualified beneficiaries, the nature of the services provided
 215 by the trustee or its affiliate, and all compensation,
 216 including, but not limited to, fees or commissions paid or to be
 217 paid by the account and received or to be received by an
 218 affiliate arising from such affiliated investment.

219 (d) Disclosure required by this subsection shall be made
 220 at least annually unless there has been no change in the method
 221 or increase in the rate at which such compensation is calculated
 222 since the most recent disclosure. The disclosure may be given in
 223 a trust disclosure document as defined in s. 736.1008, in a copy

224 of the prospectus for the investment instrument, in any other
225 written disclosure prepared for the investment instrument under
226 applicable federal or state law, or in a written summary that
227 includes all compensation received or to be received by the
228 trustee and any affiliate of the trustee and an explanation of
229 the manner in which such compensation is calculated, either as a
230 percentage of the assets invested or by some other method.

231 (e) This subsection shall apply as follows:

232 1. This subsection does not apply to qualified investment
233 instruments or to a trust for which a right of revocation
234 exists.

235 2. For investment instruments other than qualified
236 investment instruments, paragraphs (a), (b), (c), and (d) shall
237 apply to irrevocable trusts created on or after July 1, 2007,
238 which expressly authorize the trustee, by specific reference to
239 this subsection, to invest in investment instruments owned or
240 controlled by the trustee or its affiliate.

241 3. For investment instruments other than qualified
242 investment instruments, paragraphs (a), (b), (c), and (d) shall
243 apply to irrevocable trusts created on or after July 1, 2007,
244 that are not described in subparagraph 2. and to irrevocable
245 trusts created prior to July 1, 2007, only as follows:

246 a. Such paragraphs shall not apply until ~~60 days after~~ the
247 statement required in paragraph (f) is provided and a majority
248 of the qualified beneficiaries have provided written consent.
249 All consents must be obtained within 90 days after the date of
250 delivery of the written request. Once given, consent shall be
251 valid as to all investment instruments acquired pursuant to the

252 consent prior to the date of any withdrawal of the consent ~~no~~
253 ~~objection is made or any objection which is made has been~~
254 ~~terminated.~~

255 ~~(I) An objection is made if, within 60 days after the date~~
256 ~~of the statement required in paragraph (f), a super majority of~~
257 ~~the eligible beneficiaries deliver to the trustee written~~
258 ~~objections to the application of this subsection to such trust.~~
259 ~~An objection shall be deemed to be delivered to the trustee on~~
260 ~~the date the objection is mailed to the mailing address listed~~
261 ~~in the notice provided in paragraph (f).~~

262 ~~(II) An objection is terminated upon the earlier of the~~
263 ~~receipt of consent from a super majority of eligible~~
264 ~~beneficiaries of the class that made the objection or the~~
265 ~~resolution of the objection pursuant to this subparagraph.~~

266 ~~(III) If an objection is delivered to the trustee, the~~
267 ~~trustee may petition the court for an order overruling the~~
268 ~~objection and authorizing the trustee to make investments under~~
269 ~~this subsection. The burden shall be on the trustee to show good~~
270 ~~cause for the relief sought.~~

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

276 (II)~~(V)~~ The court may award costs and attorney's fees
277 relating to any petition under this subparagraph in the same
278 manner as in chancery actions. When costs and attorney's fees
279 are to be paid out of the trust, the court, in its discretion,

280 may direct from which part of the trust such costs and fees
 281 shall be paid.

282 b. The consent ~~objection~~ of a majority of the qualified
 283 ~~super majority of eligible~~ beneficiaries under this subparagraph
 284 may ~~thereafter~~ be withdrawn prospectively ~~removed~~ by the written
 285 notice ~~consent~~ of a ~~super~~ majority of any one of the class or
 286 classes of the qualified ~~those eligible~~ beneficiaries ~~that made~~
 287 ~~the objection~~.

288 (f)1. The trustee of a trust described in s. 731.201(35)
 289 may request authority to invest in ~~Any time prior to initially~~
 290 ~~investing in any investment instruments instrument~~ described in
 291 this subsection other than a qualified investment instrument, by
 292 providing the trustee of a trust described in subparagraph (e)3.
 293 ~~shall provide~~ to all qualified beneficiaries a written request
 294 ~~statement~~ containing the following:

295 a. The name, telephone number, street address, and mailing
 296 address of the trustee and of any individuals who may be
 297 contacted for further information.

298 b. A statement that the investment or investments cannot
 299 be made without the consent of a majority of each class of the
 300 qualified beneficiaries, ~~unless a super majority of the eligible~~
 301 ~~beneficiaries objects to the application of this subsection to~~
 302 ~~the trust within 60 days after the date the statement pursuant~~
 303 ~~to this subsection was delivered, this subsection shall apply to~~
 304 ~~the trust~~.

305 c. A statement that, if a majority of each class of
 306 qualified beneficiaries consent ~~this subsection applies to the~~
 307 ~~trust~~, the trustee will have the right to make investments in

308 investment instruments, as defined in s. 660.25(6), which are
 309 owned or controlled by the trustee or its affiliate, or from
 310 which the trustee or its affiliate receives compensation for
 311 providing services in a capacity other than as trustee, that
 312 such investment instruments may include investment instruments
 313 sold primarily to trust accounts, and that the trustee or its
 314 affiliate may receive fees in addition to the trustee's
 315 compensation for administering the trust.

316 d. A statement that the consent may be withdrawn
 317 prospectively at any time by written notice given by a majority
 318 of any class of the qualified beneficiaries.

319
 320 A statement by the trustee is not delivered if the statement is
 321 accompanied by another written communication other than a
 322 written communication by the trustee that refers only to the
 323 statement.

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

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

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

329 ~~(II) If there is no beneficiary described in s.~~
 330 ~~736.0103(14)(c), the beneficiaries described in s.~~
 331 ~~736.0103(14)(a) and (b).~~

332 a.b. "Super Majority of the qualified eligible
 333 beneficiaries" means:

334 (I) If at the time the determination is made there are one
 335 or more beneficiaries as described in s. 736.0103(14)(c), at

336 least a majority ~~two thirds~~ in interest of the beneficiaries
 337 described in s. 736.0103(14) (a), at least a majority in interest
 338 of the beneficiaries described in s. 736.0103(14) (b), and at
 339 least a majority ~~or two thirds~~ in interest of the beneficiaries
 340 described in s. 736.0103(14) (c), if the interests of the
 341 beneficiaries are reasonably ascertainable; otherwise, a
 342 majority ~~two thirds~~ in number of each ~~either~~ such class; or

343 (II) If there is no beneficiary as described in s.
 344 736.0103(14) (c), at least a majority ~~two thirds~~ in interest of
 345 the beneficiaries described in s. 736.0103(14) (a) and at least a
 346 majority ~~or two thirds~~ in interest of the beneficiaries
 347 described in s. 736.0103(14) (b), if the interests of the
 348 beneficiaries are reasonably ascertainable; otherwise, a
 349 majority ~~two thirds~~ in number of each ~~either~~ such class.

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

353 c.d. An irrevocable trust is created upon execution of the
 354 trust instrument. If a trust that was revocable when created
 355 thereafter becomes irrevocable, the irrevocable trust is created
 356 when the right of revocation terminates.

357 (g) Nothing in this chapter is intended to create or imply
 358 a duty for the trustee to seek the application of this
 359 subsection to invest in investment instruments described in
 360 paragraph (a), and no inference of impropriety may be made as a
 361 result of a trustee electing not to invest trust assets in
 362 investment instruments described in paragraph (a).

363 (h) This subsection is not the exclusive authority under
 364 this code for investing in investment instruments described in
 365 paragraph (a). A trustee who invests trust funds in investment
 366 instruments described in paragraph (a) is not required to comply
 367 with paragraph (b), paragraph (c), or paragraph (f) if the
 368 trustee is permitted to invest in such investment instruments
 369 pursuant to subsection (2).

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

372 736.0816 Specific powers of trustee.--Except as limited or
 373 restricted by this code, a trustee may:

374 (3) Acquire an undivided interest in a trust asset,
 375 including, but not limited to, a money market mutual fund,
 376 mutual fund, or common trust fund, in which asset the trustee
 377 holds an undivided interest in any trust capacity, including any
 378 money market or other mutual fund from which the trustee or any
 379 affiliate or associate of the trustee is entitled to receive
 380 reasonable compensation for providing necessary services as an
 381 investment adviser, portfolio manager, or servicing agent. A
 382 trustee or affiliate or associate of the trustee may receive
 383 compensation for such services in addition to fees received for
 384 administering the trust provided such compensation is fully
 385 disclosed in writing to all qualified beneficiaries. As used in
 386 this subsection, the term "mutual fund" includes an open-end or
 387 closed-end management investment company or investment trust
 388 registered under the Investment Company Act of 1940, 15 U.S.C.
 389 ss. 80a-1 et seq., as amended.

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

392 736.1008 Limitations on proceedings against trustees.--

393 (6) This section applies to trust accountings for
 394 accounting periods beginning on or after July January 1, 2007
 395 ~~2008~~, and to written reports, other than trust accountings,
 396 received by a beneficiary on or after July January 1, 2007 2008.

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

399 736.1011 Exculpation of trustee.--

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

403 (a) The trustee proves that the exculpatory term is fair
 404 under the circumstances.

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

409 Section 7. Paragraph (d) of subsection (2), subsections
 410 (3) and (7), and paragraph (a) of subsection (9) of section
 411 689.071, Florida Statutes, as amended by section 21 of chapter
 412 2006-217, Laws of Florida, are amended to read:

413 689.071 Florida Land Trust Act.--

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

415 (d) "Land trust" ~~is not the creation of an entity, but~~
 416 means any express written agreement or arrangement by which a
 417 use, confidence, or trust is declared of any land, or of any

418 charge upon land, ~~for the use or benefit of any beneficiary,~~
 419 under which the title to real property, both legal and
 420 equitable, is vested in a trustee by a recorded instrument that
 421 confers on the trustee the power and authority prescribed in
 422 subsection (3). The recorded instrument does not itself create
 423 an entity, regardless of whether the relationship among the
 424 beneficiaries and the trustee is deemed to be an entity under
 425 other applicable law ~~held by a trustee, subject only to the~~
 426 ~~execution of the trust, which may be enforced by the~~
 427 ~~beneficiaries.~~

428 (3) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance, deed,
 429 mortgage, lease assignment, or other instrument heretofore or
 430 hereafter made, hereinafter referred to as the "~~the~~ recorded
 431 instrument," transferring any interest in real property in this
 432 state, including, but not limited to, a leasehold or mortgagee
 433 interest, to any person or any corporation, bank, trust company,
 434 or other entity duly formed under the laws of its state of
 435 qualification, in which recorded instrument the person,
 436 corporation, bank, trust company, or other entity is designated
 437 "trustee," or "as trustee," ~~without therein naming the~~
 438 ~~beneficiaries of such trust,~~ whether or not reference is made in
 439 the recorded instrument to the beneficiaries of such trust or to
 440 any separate collateral unrecorded declarations or agreements,
 441 is effective to vest, and is hereby declared to have vested, in
 442 such trustee both legal and equitable title, and full rights of
 443 ownership, over the real property or interest therein, with full
 444 power and authority as granted and provided in the recorded
 445 instrument to deal in and with the property or interest therein

446 or any part thereof; provided, the recorded instrument confers
 447 on the trustee the power and authority ~~either~~ to protect, to
 448 conserve, ~~and~~ to sell, ~~or~~ to lease, ~~or~~ to encumber, or otherwise
 449 to manage and dispose of the real property described in the
 450 recorded instrument.

451 (7) TRUSTEE LIABILITY.--In addition to any other
 452 limitation on personal liability existing pursuant to statute or
 453 otherwise, the provisions of ss. 736.08125 and 736.1013 ~~s-~~
 454 ~~736.1013~~ apply to the trustee of a land trust created pursuant
 455 to this section.

456 (9) SUCCESSOR TRUSTEE.--

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

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

463 731.201 General definitions.--Subject to additional
 464 definitions in subsequent chapters that are applicable to
 465 specific chapters or parts, and unless the context otherwise
 466 requires, in this code, in s. 409.9101, and in chapters 736,
 467 738, 739, and 744, the term:

468 (35) "Trust" means an express trust, private or
 469 charitable, with additions to it, wherever and however created.
 470 It also includes a trust created or determined by a judgment or
 471 decree under which the trust is to be administered in the manner
 472 of an express trust. "Trust" excludes other constructive trusts,
 473 and it excludes resulting trusts; conservatorships; custodial

474 arrangements pursuant to the Florida Uniform Transfers to Minors
 475 Act; business trusts providing for certificates to be issued to
 476 beneficiaries; common trust funds; land trusts under s. 689.071,
 477 except to the extent provided in s. 689.071(7) ~~689.05~~; trusts
 478 created by the form of the account or by the deposit agreement
 479 at a financial institution; voting trusts; security
 480 arrangements; liquidation trusts; trusts for the primary purpose
 481 of paying debts, dividends, interest, salaries, wages, profits,
 482 pensions, or employee benefits of any kind; and any arrangement
 483 under which a person is nominee or escrowee for another.

484 Section 9. Section 731.303, Florida Statutes, as amended
 485 by section 30 of chapter 2006-217, Laws of Florida, is amended
 486 to read:

487 731.303 Representation.--In the administration of or in
 488 judicial proceedings involving estates of decedents ~~or trusts~~,
 489 the following apply:

490 (1) Persons are bound by orders binding others in the
 491 following cases:

492 (a)1. Orders binding the sole holder or all coholders of a
 493 power of revocation or a general, special, or limited power of
 494 appointment, including one in the form of a power of amendment
 495 or revocation to the extent that the power has not become
 496 unexercisable in fact, bind all persons to the extent that their
 497 interests, as persons who may take by virtue of the exercise or
 498 nonexercise of the power, are subject to the power.

499 2. Subparagraph 1. does not apply to:

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

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

503 c. A power of appointment held by a person while the
504 person is the sole trustee.

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

507 1. Orders binding a guardian of the property bind the
508 ward.

509 2. Orders binding a trustee bind beneficiaries of the
510 trust in proceedings to probate a will, in establishing or
511 adding to a trust, in reviewing the acts or accounts of a prior
512 fiduciary, and in proceedings involving creditors or other third
513 parties. However, for purposes of this section, a conflict of
514 interest shall be deemed to exist when each trustee of a trust
515 that is a beneficiary of the estate is also a personal
516 representative of the estate.

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

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

525 (2) Orders binding a guardian of the person shall not bind
526 the ward.

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

529 (a) Notice as prescribed by law shall be given to every

530 interested person, or to one who can bind the interested person
531 as described in paragraph (1) (a) or paragraph (1) (b). Notice may
532 be given both to the interested person and to another who can
533 bind him or her.

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

539 (4) If the court determines that representation of the
540 interest would otherwise be inadequate, the court may, at any
541 time, appoint a guardian ad litem to represent the interests of
542 an incapacitated person, an unborn or unascertained person, a
543 minor or any other person otherwise under a legal disability, or
544 a person whose identity or address is unknown. If not precluded
545 by conflict of interest, a guardian ad litem may be appointed to
546 represent several persons or interests.

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

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

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

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

557 Section 10. Section 736.0102, Florida Statutes, is amended

558 to read:

559 736.0102 Scope.--This code applies to express trusts,
 560 charitable or noncharitable, and trusts created pursuant to a
 561 law, judgment, or decree that requires the trust to be
 562 administered in the manner of an express trust. This code does
 563 not apply to constructive or resulting trusts; conservatorships;
 564 custodial arrangements pursuant to the Florida Uniform Transfers
 565 to Minors Act; business trusts providing for certificates to be
 566 issued to beneficiaries; common trust funds; land trusts under
 567 s. 689.071, except to the extent provided in s. 689.071(7) s-
 568 ~~689.05~~; trusts created by the form of the account or by the
 569 deposit agreement at a financial institution; voting trusts;
 570 security arrangements; liquidation trusts; trusts for the
 571 primary purpose of paying debts, dividends, interest, salaries,
 572 wages, profits, pensions, or employee benefits of any kind; and
 573 any arrangement under which a person is nominee or escrowee for
 574 another.

575 Section 11. Section 736.0501, Florida Statutes, is amended
 576 to read:

577 736.0501 Rights of beneficiary's creditor or
 578 assignee.--Except as provided in s. 736.0504, to the extent a
 579 beneficiary's interest is not subject to a spendthrift
 580 provision, the court may authorize a creditor or assignee of the
 581 beneficiary to reach the beneficiary's interest by attachment of
 582 present or future distributions to or for the benefit of the
 583 beneficiary or by other means. The court may limit the award to
 584 such relief as is appropriate under the circumstances.

585 Section 12. Subsection (1) of section 736.0502, Florida

586 Statutes, is amended to read:

587 736.0502 Spendthrift provision.--

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

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

595 736.0503 Exceptions to spendthrift provision.--

596 (3) Except as otherwise provided in this subsection and in
 597 s. 736.0504, a claimant against which a spendthrift provision
 598 may not be enforced may obtain from a court, or pursuant to the
 599 Uniform Interstate Family Support Act, an order attaching
 600 present or future distributions to or for the benefit of the
 601 beneficiary. The court may limit the award to such relief as is
 602 appropriate under the circumstances. Notwithstanding this
 603 subsection, the remedies provided in this subsection apply to a
 604 claim by a beneficiary's child, spouse, former spouse, or a
 605 judgment creditor described in paragraph (2)(a) or paragraph
 606 (2)(b) only as a last resort upon an initial showing that
 607 traditional methods of enforcing the claim are insufficient.

608 Section 14. Section 736.0504, Florida Statutes, is amended
 609 to read:

610 736.0504 Discretionary trusts; effect of standard.--

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

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

616 (2) Whether or not a trust contains a spendthrift
617 provision, if a trustee may make discretionary distributions to
618 or for the benefit of a beneficiary, a creditor of the
619 beneficiary, including a creditor as described in s.
620 736.0503(2), may not:

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

623 (b) Attach or otherwise reach the interest, if any, which
624 the beneficiary might have as a result of the trustee's
625 authority to make discretionary distributions to or for the
626 benefit of the beneficiary. ~~Whether or not a trust contains a~~
627 ~~spendthrift provision, a creditor of a beneficiary may not~~
628 ~~compel a distribution that is subject to the trustee's~~
629 ~~discretion, even if:~~

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

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

633 (3)(2) If the trustee's discretion to make distributions
634 for the trustee's own benefit is limited by an ascertainable
635 standard, a creditor may not reach or compel distribution of the
636 beneficial interest except to the extent the interest would be
637 subject to the creditor's claim were the beneficiary not acting
638 as trustee.

639 (4)(3) This section does not limit the right of a
640 beneficiary to maintain a judicial proceeding against a trustee
641 for an abuse of discretion or failure to comply with a standard

642 for distribution.

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

645 736.0813 Duty to inform and account.--The trustee shall
646 keep the qualified beneficiaries of the trust reasonably
647 informed of the trust and its administration.

648 (5) This section applies to trust accountings rendered for
649 accounting periods beginning on or after July 1, 2007 ~~January 1,~~
650 ~~2008~~.

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

653 736.1106 Antilapse; survivorship with respect to future
654 interests under terms of inter vivos and testamentary trusts;
655 substitute takers.--

656 (5) Subsections (1) through (4) apply ~~This section applies~~
657 to all trusts other than trusts that were irrevocable before the
658 effective date of this code. Sections 732.603, 732.604, and
659 737.6035, as they exist on June 30, 2007, continue to apply to
660 other trusts executed on or after June 12, 2003.

661 Section 17. Paragraph (a) of subsection (4) of section
662 736.1204, Florida Statutes, is amended to read:

663 736.1204 Powers and duties of trustee of a private
664 foundation trust or a split interest trust.--

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

667 (a) All the income interest ~~from income~~, and none of the
668 remainder interest, of the trust is devoted solely to one or
669 more of the purposes described in s. 170(c)(2)(B) of the

670 Internal Revenue Code, and all amounts in the trust for which a
 671 deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2),
 672 s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal
 673 Revenue Code have an aggregate fair market value of not more
 674 than 60 percent of the aggregate fair market value of all
 675 amounts in the trust; or

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

678 736.1209 Election to come under this part.--With the
 679 consent of that organization or organizations, a trustee of a
 680 trust for the benefit of a public charitable organization or
 681 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
 682 filing with the state attorney an election, accompanied by the
 683 proof of required consent. Thereafter the trust shall be subject
 684 to s. 736.1208(5).

685 Section 19. Paragraph (g) of subsection (2) of section
 686 736.1001, Florida Statutes, is amended to read:

687 736.1001 Remedies for breach of trust.--

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

690 (g) Remove the trustee as provided in s. 736.0706 ~~s.~~
 691 ~~736.706~~;

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