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CS/HB 743, Engrossed 2

2007 Legislature

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

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

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

58
 59 Section 1. Subsection (3) of section 660.417, Florida
 60 Statutes, as amended by section 18 of chapter 2006-217, Laws of
 61 Florida, is amended to read:

62 660.417 Investment of fiduciary funds in investment
 63 instruments; permissible activity under certain circumstances;
 64 limitations.--

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

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

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

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

82 2. If sold to other customers, are not sold to the trust
 83 accounts ~~fiduciary~~ upon terms that are less ~~not more~~ favorable
 84 to the buyer than the terms upon which they are normally sold to

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85 ~~the other customers accounts for which the bank or trust company~~
86 ~~is acting as a fiduciary.~~

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

89 736.04117 Trustee's power to invade principal in trust.--

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

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

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

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

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

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

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

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

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

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

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

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

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

164 736.0802 Duty of loyalty.--

165 (2) Subject to the rights of persons dealing with or
 166 assisting the trustee as provided in s. 736.1016, a sale,
 167 encumbrance, or other transaction involving the investment or
 168 management of trust property entered into by the trustee for the

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169 trustee's own personal account or which is otherwise affected by
 170 a conflict between the trustee's fiduciary and personal
 171 interests is voidable by a beneficiary affected by the
 172 transaction unless:

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

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

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

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

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

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

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

189 (5) (a) An investment by a trustee authorized by lawful
 190 authority to engage in trust business, as defined in s.
 191 658.12(20), in investment instruments, as defined in s.
 192 660.25(6), that are owned or controlled by the trustee or its
 193 affiliate, or from which the trustee or its affiliate receives
 194 compensation for providing services in a capacity other than as
 195 trustee, is not presumed to be affected by a conflict between
 196 personal and fiduciary interests provided the investment

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197 otherwise complies with chapters 518 and 660 and the trustee
 198 complies with the ~~disclosure~~ requirements of this subsection.

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

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

206 2. The identity of the investment instruments.

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

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

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

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

230 (e) This subsection shall apply as follows:

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

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

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

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

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252 ~~objection is made or any objection which is made has been~~
253 ~~terminated.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

318
 319 A statement by the trustee is not delivered if the statement is
 320 accompanied by another written communication other than a
 321 written communication by the trustee that refers only to the
 322 statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

371 736.0816 Specific powers of trustee.--Except as limited or
 372 restricted by this code, a trustee may:

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

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

391 736.1008 Limitations on proceedings against trustees.--

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

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

398 736.1011 Exculpation of trustee.--

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

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

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

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

412 689.071 Florida Land Trust Act.--

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

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

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

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

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

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

455 (9) SUCCESSOR TRUSTEE.--

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

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

462 731.201 General definitions.--Subject to additional
 463 definitions in subsequent chapters that are applicable to
 464 specific chapters or parts, and unless the context otherwise
 465 requires, in this code, in s. 409.9101, and in chapters 736,
 466 738, 739, and 744, the term:

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

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

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

486 731.303 Representation.--In the administration of or in
 487 judicial proceedings involving estates of decedents ~~or trusts~~,
 488 the following apply:

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

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

498 2. Subparagraph 1. does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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557 to read:
 558 736.0102 Scope.--This code applies to express trusts,
 559 charitable or noncharitable, and trusts created pursuant to a
 560 law, judgment, or decree that requires the trust to be
 561 administered in the manner of an express trust. This code does
 562 not apply to constructive or resulting trusts; conservatorships;
 563 custodial arrangements pursuant to the Florida Uniform Transfers
 564 to Minors Act; business trusts providing for certificates to be
 565 issued to beneficiaries; common trust funds; land trusts under
 566 s. 689.071, except to the extent provided in s. 689.071(7) s-
 567 ~~689.05~~; trusts created by the form of the account or by the
 568 deposit agreement at a financial institution; voting trusts;
 569 security arrangements; liquidation trusts; trusts for the
 570 primary purpose of paying debts, dividends, interest, salaries,
 571 wages, profits, pensions, or employee benefits of any kind; and
 572 any arrangement under which a person is nominee or escrowee for
 573 another.

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

576 736.0501 Rights of beneficiary's creditor or
 577 assignee.--Except as provided in s. 736.0504, to the extent a
 578 beneficiary's interest is not subject to a spendthrift
 579 provision, the court may authorize a creditor or assignee of the
 580 beneficiary to reach the beneficiary's interest by attachment of
 581 present or future distributions to or for the benefit of the
 582 beneficiary or by other means. The court may limit the award to
 583 such relief as is appropriate under the circumstances.

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

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585 Statutes, is amended to read:

586 736.0502 Spendthrift provision.--

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

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

594 736.0503 Exceptions to spendthrift provision.--

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

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

609 736.0504 Discretionary trusts; effect of standard.--

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

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

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

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

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

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

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

632 (3)(2) If the trustee's discretion to make distributions
 633 for the trustee's own benefit is limited by an ascertainable
 634 standard, a creditor may not reach or compel distribution of the
 635 beneficial interest except to the extent the interest would be
 636 subject to the creditor's claim were the beneficiary not acting
 637 as trustee.

638 (4)(3) This section does not limit the right of a
 639 beneficiary to maintain a judicial proceeding against a trustee
 640 for an abuse of discretion or failure to comply with a standard

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641 for distribution.

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

644 736.0813 Duty to inform and account.--The trustee shall
 645 keep the qualified beneficiaries of the trust reasonably
 646 informed of the trust and its administration.

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

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

652 736.1106 Antilapse; survivorship with respect to future
 653 interests under terms of inter vivos and testamentary trusts;
 654 substitute takers.--

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

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

662 736.1204 Powers and duties of trustee of a private
 663 foundation trust or a split interest trust.--

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

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

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

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

677 736.1209 Election to come under this part.--With the
 678 consent of that organization or organizations, a trustee of a
 679 trust for the benefit of a public charitable organization or
 680 organizations may come under s. 736.1208(5) ~~s. 736.0838(5)~~ by
 681 filing with the state attorney an election, accompanied by the
 682 proof of required consent. Thereafter the trust shall be subject
 683 to s. 736.1208(5).

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

686 736.1001 Remedies for breach of trust.--

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

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

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