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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/25/2008	.	
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	.	

1 The Committee on Judiciary (Baker) recommended the following
 2 **amendment:**

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

8 Section 1. Subsection (7) of section 736.0703, Florida
9 Statutes, is amended, and subsection (9) is added to that
10 section, to read:

11 736.0703 Cotrustees.--

12 (7) Except as otherwise provided in subsection (9), each
13 cotrustee shall exercise reasonable care to:

14 (a) Prevent a cotrustee from committing a breach of trust.

15 (b) Compel a cotrustee to redress a breach of trust.

16 (9) If the terms of a trust instrument provide for the
17 appointment of more than one trustee but confer upon one or more

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18 of the trustees, to the exclusion of the others, the power to
19 direct or prevent specified actions of the trustees, the excluded
20 trustees shall act in accordance with the exercise of the power.
21 Except in cases of willful misconduct on the part of the directed
22 trustee of which the excluded trustee has actual knowledge, an
23 excluded trustee is not liable, individually or as a fiduciary,
24 for any consequence that results from compliance with the
25 exercise of the power, regardless of the information available to
26 the excluded trustees. The excluded trustees are relieved of any
27 obligation to review, inquire, investigate, or make
28 recommendations or evaluations with respect to the exercise of
29 the power. The trustee or trustees having the power to direct or
30 prevent actions of the trustees shall be liable to the
31 beneficiaries with respect to the exercise of the power as if the
32 excluded trustees were not in office and shall have the exclusive
33 obligation to account to and to defend any action brought by the
34 beneficiaries with respect to the exercise of the power.

35 Section 2. Subsection (10) of section 736.0802, Florida
36 Statutes, is amended to read:

37 736.0802 Duty of loyalty.--

38 (10) Payment of costs or attorney's fees incurred in any
39 ~~trust~~ proceeding from the assets of the trust may be made by the
40 trustee without the approval of any person and without court
41 authorization, unless the court orders otherwise as provided in
42 paragraph (b) except that court authorization shall be required
43 if an action has been filed or defense asserted against the
44 trustee based upon a breach of trust. Court authorization is not
45 required if the action or defense is later withdrawn or dismissed
46 by the party that is alleging a breach of trust or resolved



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47 ~~without a determination by the court that the trustee has~~
48 ~~committed a breach of trust.~~

49 (a) If a claim or defense based upon a breach of trust is
50 made against a trustee in a proceeding, the trustee shall provide
51 written notice to each qualified beneficiary of the trust whose
52 share of the trust may be affected by the payment of attorney's
53 fees and costs of the intention to pay costs or attorney's fees
54 incurred in the proceeding from the trust prior to making
55 payment. The written notice shall be delivered by sending a copy
56 by any commercial delivery service requiring a signed receipt, by
57 any form of mail requiring a signed receipt, or as provided in
58 the Florida Rules of Civil Procedure for service of process. The
59 written notice shall inform each qualified beneficiary of the
60 trust whose share of the trust may be affected by the payment of
61 attorney's fees and costs of the right to apply to the court for
62 an order prohibiting the trustee from paying attorney's fees or
63 costs from trust assets. If a trustee is served with a motion for
64 an order prohibiting the trustee from paying attorney's fees or
65 costs in the proceeding and the trustee pays attorney's fees or
66 costs before an order is entered on the motion, the trustee and
67 the trustee's attorneys who have been paid attorney's fees or
68 costs from trust assets to defend against the claim or defense
69 are subject to the remedies in paragraphs (b) and (c).

70 (b) If a claim or defense based upon breach of trust is
71 made against a trustee in a proceeding, a party must obtain a
72 court order to prohibit the trustee from paying costs or
73 attorney's fees from trust assets. To obtain an order prohibiting
74 payment of costs or attorney's fees from trust assets, a party
75 must make a reasonable showing by evidence in the record or by
76 proffering evidence that provides a reasonable basis for a court



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77 to conclude that there has been a breach of trust. The trustee
78 may proffer evidence to rebut the evidence submitted by a party.
79 The court in its discretion may defer ruling on the motion,
80 pending discovery to be taken by the parties. If the court finds
81 that there is a reasonable basis to conclude that there has been
82 a breach of trust, unless the court finds good cause, the court
83 shall enter an order prohibiting the payment of further
84 attorney's fees and costs from the assets of the trust and shall
85 order attorney's fees or costs previously paid from assets of the
86 trust to be refunded. An order entered under this paragraph shall
87 not limit a trustee's right to seek an order permitting the
88 payment of some or all of the attorney's fees or costs incurred
89 in the proceeding from trust assets, including any fees required
90 to be refunded, after the claim or defense is finally determined
91 by the court. If a claim or defense based upon a breach of trust
92 is withdrawn, dismissed, or resolved without a determination by
93 the court that the trustee committed a breach of trust after the
94 entry of an order prohibiting payment of attorney's fees and
95 costs pursuant to this paragraph, the trustee may pay costs or
96 attorneys' fees incurred in the proceeding from the assets of the
97 trust without further court authorization.

98 (c) If the court orders a refund under paragraph (b), the
99 court may enter such sanctions as are appropriate if a refund is
100 not made as directed by the court, including, but not limited to,
101 striking defenses or pleadings filed by the trustee. Nothing in
102 this subsection limits other remedies and sanctions the court may
103 employ for the failure to refund timely.

104 (d) Nothing in this subsection limits the power of the
105 court to review fees and costs or the right of any interested



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106 persons to challenge fees and costs after payment, after an
107 accounting, or after conclusion of the litigation.

108 (e) Notice under paragraph (a) is not required if the
109 action or defense is later withdrawn or dismissed by the party
110 that is alleging a breach of trust or resolved without a
111 determination by the court that the trustee has committed a
112 breach of trust.

113 Section 3. Subsection (3) of section 736.1008, Florida
114 Statutes, is amended, subsection (6) of that section is
115 renumbered as subsection (7), and new subsection (6) is added to
116 that section, to read:

117 736.1008 Limitations on proceedings against trustees.--

118 (3) When a trustee has not issued a final trust accounting
119 or has not given written notice to the beneficiary of the
120 availability of the trust records for examination and that claims
121 with respect to matters not adequately disclosed may be barred, a
122 claim against the trustee for breach of trust based on a matter
123 not adequately disclosed in a trust disclosure document is barred
124 as provided in chapter 95 and accrues when the beneficiary has
125 actual knowledge of:

126 (a) The facts upon which the claim is based if such actual
127 knowledge is established by clear and convincing evidence; or

128 (b) The trustee's repudiation of the trust or adverse
129 possession of trust assets, ~~and is barred as provided in chapter~~
130 95.

131
132 Paragraph (a) applies to claims based upon acts or omissions
133 occurring on or after July 1, 2008.

134 (6) (a) Notwithstanding subsections (1), (2), and (3), all
135 claims by a beneficiary against a trustee are barred:



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136 1. Upon the later of:
 137 a. Ten years after the date the trust terminates, the
 138 trustee resigns, or the fiduciary relationship between the
 139 trustee and the beneficiary otherwise ends if the beneficiary had
 140 actual knowledge of the existence of the trust and the
 141 beneficiary's status as a beneficiary throughout the 10-year
 142 period; or

143 b. Twenty years after the date of the act or omission of
 144 the trustee that is complained of if the beneficiary had actual
 145 knowledge of the existence of the trust and the beneficiary's
 146 status as a beneficiary throughout the 20-year period; or

147 2. Forty years after the date the trust terminates, the
 148 trustee resigns, or the fiduciary relationship between the
 149 trustee and the beneficiary otherwise ends.

150 (b) When a beneficiary shows by clear and convincing
 151 evidence that a trustee actively concealed facts supporting a
 152 cause of action, any existing applicable statute of repose shall
 153 be extended by 30 years.

154 (c) For purposes of sub-subparagraph (a)1.b., the failure
 155 of the trustee to take corrective action is not a separate act or
 156 omission and does not extend the period of repose established by
 157 this subsection.

158 (d) This subsection applies to claims based upon acts or
 159 omissions occurring on or after July 1, 2008.

160 Section 4. This act shall take effect July 1, 2008.

161
 162 ===== T I T L E A M E N D M E N T =====

163 And the title is amended as follows:

164 Delete everything before the enacting clause
 165 and insert:

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166 A bill to be entitled
167 An act relating to trust administration; amending s.
168 736.0703, F.S.; providing exceptions to duties and
169 liabilities of cotrustees for excluded cotrustees under
170 certain circumstances; relieving excluded cotrustees
171 from specified liabilities and obligations under
172 certain circumstances; providing for liabilities and
173 obligations of included cotrustees; amending s.
174 736.0802, F.S.; providing an exception for trustee
175 payments of costs and attorney's fees from trust assets
176 except pursuant to court order under certain
177 circumstances; requiring trustees to provide certain
178 notice to beneficiaries; providing notice requirements;
179 providing requirements for obtaining such a court
180 order; specifying remedies; providing for specified
181 refunds and sanctions; preserving certain court
182 remedies; amending s. 736.1008, F.S.; specifying
183 periods of repose barring claims by a beneficiary
184 against a trustee; providing construction; providing an
185 effective date.