

By the Committee on Judiciary; and Senator Jones

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1 A bill to be entitled

2 An act relating to trust administration; amending s.  
3 736.0703, F.S.; providing exceptions to duties and  
4 liabilities of cotrustees for excluded cotrustees under  
5 certain circumstances; relieving excluded cotrustees from  
6 specified liabilities and obligations under certain  
7 circumstances; providing for liabilities and obligations  
8 of included cotrustees; amending s. 736.0802, F.S.;  
9 providing an exception for trustee payments of costs and  
10 attorney's fees from trust assets except pursuant to court  
11 order under certain circumstances; requiring trustees to  
12 provide certain notice to beneficiaries; providing notice  
13 requirements; providing requirements for obtaining such a  
14 court order; specifying remedies; providing for specified  
15 refunds and sanctions; preserving certain court remedies;  
16 amending s. 736.1008, F.S.; specifying periods of repose  
17 barring claims by a beneficiary against a trustee;  
18 providing construction; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Subsection (7) of section 736.0703, Florida  
23 Statutes, is amended, and subsection (9) is added to that  
24 section, to read:

25 736.0703 Cotrustees.--

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

- 28 (a) Prevent a cotrustee from committing a breach of trust.  
29 (b) Compel a cotrustee to redress a breach of trust.

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30       (9) If the terms of a trust instrument provide for the  
31 appointment of more than one trustee but confer upon one or more  
32 of the trustees, to the exclusion of the others, the power to  
33 direct or prevent specified actions of the trustees, the excluded  
34 trustees shall act in accordance with the exercise of the power.  
35 Except in cases of willful misconduct on the part of the directed  
36 trustee of which the excluded trustee has actual knowledge, an  
37 excluded trustee is not liable, individually or as a fiduciary,  
38 for any consequence that results from compliance with the  
39 exercise of the power, regardless of the information available to  
40 the excluded trustees. The excluded trustees are relieved of any  
41 obligation to review, inquire, investigate, or make  
42 recommendations or evaluations with respect to the exercise of  
43 the power. The trustee or trustees having the power to direct or  
44 prevent actions of the trustees shall be liable to the  
45 beneficiaries with respect to the exercise of the power as if the  
46 excluded trustees were not in office and shall have the exclusive  
47 obligation to account to and to defend any action brought by the  
48 beneficiaries with respect to the exercise of the power.

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

51       736.0802 Duty of loyalty.--

52       (10) Payment of costs or attorney's fees incurred in any  
53 ~~trust~~ proceeding from the assets of the trust may be made by the  
54 trustee without the approval of any person and without court  
55 authorization, unless the court orders otherwise as provided in  
56 paragraph (b) ~~except that court authorization shall be required~~  
57 ~~if an action has been filed or defense asserted against the~~  
58 ~~trustee based upon a breach of trust. Court authorization is not~~

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59 ~~required if the action or defense is later withdrawn or dismissed~~  
60 ~~by the party that is alleging a breach of trust or resolved~~  
61 ~~without a determination by the court that the trustee has~~  
62 ~~committed a breach of trust.~~

63 (a) If a claim or defense based upon a breach of trust is  
64 made against a trustee in a proceeding, the trustee shall provide  
65 written notice to each qualified beneficiary of the trust whose  
66 share of the trust may be affected by the payment of attorney's  
67 fees and costs of the intention to pay costs or attorney's fees  
68 incurred in the proceeding from the trust prior to making  
69 payment. The written notice shall be delivered by sending a copy  
70 by any commercial delivery service requiring a signed receipt, by  
71 any form of mail requiring a signed receipt, or as provided in  
72 the Florida Rules of Civil Procedure for service of process. The  
73 written notice shall inform each qualified beneficiary of the  
74 trust whose share of the trust may be affected by the payment of  
75 attorney's fees and costs of the right to apply to the court for  
76 an order prohibiting the trustee from paying attorney's fees or  
77 costs from trust assets. If a trustee is served with a motion for  
78 an order prohibiting the trustee from paying attorney's fees or  
79 costs in the proceeding and the trustee pays attorney's fees or  
80 costs before an order is entered on the motion, the trustee and  
81 the trustee's attorneys who have been paid attorney's fees or  
82 costs from trust assets to defend against the claim or defense  
83 are subject to the remedies in paragraphs (b) and (c).

84 (b) If a claim or defense based upon breach of trust is  
85 made against a trustee in a proceeding, a party must obtain a  
86 court order to prohibit the trustee from paying costs or  
87 attorney's fees from trust assets. To obtain an order prohibiting

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88 payment of costs or attorney's fees from trust assets, a party  
89 must make a reasonable showing by evidence in the record or by  
90 proffering evidence that provides a reasonable basis for a court  
91 to conclude that there has been a breach of trust. The trustee  
92 may proffer evidence to rebut the evidence submitted by a party.  
93 The court in its discretion may defer ruling on the motion,  
94 pending discovery to be taken by the parties. If the court finds  
95 that there is a reasonable basis to conclude that there has been  
96 a breach of trust, unless the court finds good cause, the court  
97 shall enter an order prohibiting the payment of further  
98 attorney's fees and costs from the assets of the trust and shall  
99 order attorney's fees or costs previously paid from assets of the  
100 trust to be refunded. An order entered under this paragraph shall  
101 not limit a trustee's right to seek an order permitting the  
102 payment of some or all of the attorney's fees or costs incurred  
103 in the proceeding from trust assets, including any fees required  
104 to be refunded, after the claim or defense is finally determined  
105 by the court. If a claim or defense based upon a breach of trust  
106 is withdrawn, dismissed, or resolved without a determination by  
107 the court that the trustee committed a breach of trust after the  
108 entry of an order prohibiting payment of attorney's fees and  
109 costs pursuant to this paragraph, the trustee may pay costs or  
110 attorneys' fees incurred in the proceeding from the assets of the  
111 trust without further court authorization.

112 (c) If the court orders a refund under paragraph (b), the  
113 court may enter such sanctions as are appropriate if a refund is  
114 not made as directed by the court, including, but not limited to,  
115 striking defenses or pleadings filed by the trustee. Nothing in  
116 this subsection limits other remedies and sanctions the court may

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117 employ for the failure to refund timely.

118 (d) Nothing in this subsection limits the power of the  
119 court to review fees and costs or the right of any interested  
120 persons to challenge fees and costs after payment, after a  
121 accounting, or after conclusion of the litigation.

122 (e) Notice under paragraph (a) is not required if the  
123 action or defense is later withdrawn or dismissed by the party  
124 that is alleging a breach of trust or resolved without a  
125 determination by the court that the trustee has committed a  
126 breach of trust.

127 Section 3. Subsection (3) of section 736.1008, Florida  
128 Statutes, is amended, subsection (6) of that section is  
129 renumbered as subsection (7), and new subsection (6) is added to  
130 that section, to read:

131 736.1008 Limitations on proceedings against trustees.--

132 (3) When a trustee has not issued a final trust accounting  
133 or has not given written notice to the beneficiary of the  
134 availability of the trust records for examination and that claims  
135 with respect to matters not adequately disclosed may be barred, a  
136 claim against the trustee for breach of trust based on a matter  
137 not adequately disclosed in a trust disclosure document is barred  
138 as provided in chapter 95 and accrues when the beneficiary has  
139 actual knowledge of:

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

142 (b) The trustee's repudiation of the trust or adverse  
143 possession of trust assets, ~~and is barred as provided in chapter~~  
144 ~~95.~~

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

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

150 1. Upon the later of:

151 a. Ten years after the date the trust terminates, the  
152 trustee resigns, or the fiduciary relationship between the  
153 trustee and the beneficiary otherwise ends if the beneficiary had  
154 actual knowledge of the existence of the trust and the  
155 beneficiary's status as a beneficiary throughout the 10-year  
156 period; or

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

161 2. Forty years after the date the trust terminates, the  
162 trustee resigns, or the fiduciary relationship between the  
163 trustee and the beneficiary otherwise ends.

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

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

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

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