

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; providing for liabilities and
 6 obligations of included cotrustees; amending s. 736.0802,
 7 F.S.; providing an exception for trustee payments of costs
 8 and attorney's fees from trust assets except pursuant to
 9 court order under certain circumstances; providing
 10 requirements for obtaining such a court order; preserving
 11 certain court remedies; amending s. 736.1008, F.S.;
 12 specifying periods of repose barring claims by a
 13 beneficiary against a trustee; providing construction;
 14 providing an effective date.

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

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

21 736.0703 Cotrustees.--

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

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

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

26 (9) If the terms of a trust instrument provide for the
 27 appointment of more than one trustee but confer upon one or more
 28 of the trustees, to the exclusion of the others, the power to

29 direct or prevent specified actions of the trustees, the
 30 excluded trustees shall act in accordance with the exercise of
 31 the power. An excluded trustee is not liable, individually or as
 32 a fiduciary, for any consequence that results from compliance
 33 with the exercise of the power, regardless of the information
 34 available to the excluded trustees. The excluded trustees are
 35 relieved of any obligation to review, inquire, investigate, or
 36 make recommendations or evaluations with respect to the exercise
 37 of the power. The trustee or trustees having the power to direct
 38 or prevent actions of the trustees shall be liable to the
 39 beneficiaries with respect to the exercise of the power as if
 40 the excluded trustees were not in office and shall have the
 41 exclusive obligation to account to and to defend any action
 42 brought by the beneficiaries with respect to the exercise of the
 43 power.

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

46 736.0802 Duty of loyalty.--

47 (10) Payment of costs or attorney's fees incurred in any
 48 trust proceeding from the assets of the trust may be made by the
 49 trustee without the approval of any person and without court
 50 authorization, unless the court orders otherwise as provided in
 51 paragraph (a). ~~except that court authorization shall be required~~
 52 ~~if an action has been filed~~

53 (a) If a claim or defense asserted against the trustee
 54 based upon a breach of trust is made against the trustee in a
 55 trust proceeding, a party must obtain a court order to prohibit
 56 the trustee from paying costs or attorney's fees from trust

57 assets. To obtain an order prohibiting payment of costs or
58 attorney's fees from trust assets, a party must make a
59 reasonable showing by evidence in the record or by proffering
60 evidence that provides a reasonable basis for a court to
61 conclude that there has been a breach of trust. The trustee may
62 proffer evidence to rebut the evidence submitted by a party.

63 (b) Nothing in this subsection is intended to restrict the
64 remedies a court may employ to remedy a breach of trust,
65 including, but not limited to, ordering appropriate refunds.
66 ~~Court authorization is not required if the action or defense is~~
67 ~~later withdrawn or dismissed by the party that is alleging a~~
68 ~~breach of trust or resolved without a determination by the court~~
69 ~~that the trustee has committed a breach of trust.~~

70 Section 3. Subsection (3) of section 736.1008, Florida
71 Statutes, is amended, subsection (6) of that section is
72 renumbered as subsection (7), and new subsection (6) is added to
73 that section, to read:

74 736.1008 Limitations on proceedings against trustees.--

75 (3) When a trustee has not issued a final trust accounting
76 or has not given written notice to the beneficiary of the
77 availability of the trust records for examination and that
78 claims with respect to matters not adequately disclosed may be
79 barred, a claim against the trustee for breach of trust based on
80 a matter not adequately disclosed in a trust disclosure document
81 accrues when the beneficiary has actual knowledge of the facts
82 upon which the claim is based and the trustee's repudiation of
83 the trust or adverse possession of trust assets, and is barred
84 as provided in chapter 95.

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85 (6) (a) Notwithstanding subsections (1), (2), and (3), all
86 claims by a beneficiary against a trustee are barred upon the
87 later of:

88 1. Ten years after the date the trust terminates, the
89 trustee resigns, or the fiduciary relationship between the
90 trustee and the beneficiary otherwise ends; or

91 2. Twenty years after the date of the act or omission of
92 the trustee that is complained of.

93 (b) For purposes of this subsection, the failure of the
94 trustee to take corrective action shall not be construed as a
95 separate act or omission and shall not be construed to extend
96 the period of repose established by this subsection.

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