

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:

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 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.  
 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  
 34 excluded trustees shall act in accordance with the exercise of  
 35 the power. Except in cases of willful misconduct on the part of  
 36 the directed trustee of which the excluded trustee has actual  
 37 knowledge, an excluded trustee is not liable, individually or as  
 38 a fiduciary, for any consequence that results from compliance  
 39 with the exercise of the power, regardless of the information  
 40 available to the excluded trustees. The excluded trustees are  
 41 relieved of any obligation to review, inquire, investigate, or  
 42 make recommendations or evaluations with respect to the exercise  
 43 of the power. The trustee or trustees having the power to direct  
 44 or prevent actions of the trustees shall be liable to the  
 45 beneficiaries with respect to the exercise of the power as if  
 46 the excluded trustees were not in office and shall have the  
 47 exclusive obligation to account to and to defend any action  
 48 brought by the beneficiaries with respect to the exercise of the  
 49 power.

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

52 736.0802 Duty of loyalty.--

53 (10) Payment of costs or attorney's fees incurred in any  
 54 ~~trust~~ proceeding from the assets of the trust may be made by the  
 55 trustee without the approval of any person and without court  
 56 authorization, unless the court orders otherwise as provided in

57 ~~paragraph (b) except that court authorization shall be required~~  
58 ~~if an action has been filed or defense asserted against the~~  
59 ~~trustee based upon a breach of trust. Court authorization is not~~  
60 ~~required if the action or defense is later withdrawn or~~  
61 ~~dismissed by the party that is alleging a breach of trust or~~  
62 ~~resolved without a determination by the court that the trustee~~  
63 ~~has committed a breach of trust.~~

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

85 in paragraphs (b) and (c).

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

113 incurred in the proceeding from the assets of the trust without  
 114 further court authorization.

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

121 (d) Nothing in this subsection limits the power of the  
 122 court to review fees and costs or the right of any interested  
 123 persons to challenge fees and costs after payment, after an  
 124 accounting, or after conclusion of the litigation.

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

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

134 736.1008 Limitations on proceedings against trustees.--

135 (3) When a trustee has not issued a final trust accounting  
 136 or has not given written notice to the beneficiary of the  
 137 availability of the trust records for examination and that  
 138 claims with respect to matters not adequately disclosed may be  
 139 barred, a claim against the trustee for breach of trust based on  
 140 a matter not adequately disclosed in a trust disclosure document

141 is barred as provided in chapter 95 and accrues when the  
 142 beneficiary has actual knowledge of:

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

145 (b) The trustee's repudiation of the trust or adverse  
 146 possession of trust assets, ~~and is barred as provided in chapter~~  
 147 ~~95.~~

148  
 149 Paragraph (a) applies to claims based upon acts or omissions  
 150 occurring on or after July 1, 2008.

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

153 1. Upon the later of:

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

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

164 2. Forty years after the date the trust terminates, the  
 165 trustee resigns, or the fiduciary relationship between the  
 166 trustee and the beneficiary otherwise ends.

167 (b) When a beneficiary shows by clear and convincing  
 168 evidence that a trustee actively concealed facts supporting a

CS/HB 435

2008

169 cause of action, any existing applicable statute of repose shall  
170 be extended by 30 years.

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

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

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