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CS/HB 435

2008 Legislature

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.

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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

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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

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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

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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

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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

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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.