



536702

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2009	.	
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The Committee on Judiciary (Gelber) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 77 - 100  
and insert:

Section 5. Subsections (5) and (9) of section 736.0703,  
Florida Statutes, are amended to read:

736.0703 Cotrustees.—

(5) A cotrustee may not delegate to another cotrustee the performance of a function the settlor reasonably expected the cotrustees to perform jointly, except that a trustee may delegate investment functions to a cotrustee pursuant to, and in compliance with, s. 581.112. A cotrustee may revoke a delegation



536702

13 previously made.

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

35 Section 6. Subsections (1) and (3) of section 736.0807,  
36 Florida Statutes, are amended to read:

37 736.0807 Delegation by trustee.-

38 (1) A trustee may delegate duties and powers that a prudent  
39 trustee of comparable skills could properly delegate under the  
40 circumstances, including investment functions pursuant to s.  
41 518.112. The trustee shall exercise reasonable care, skill, and



536702

42 caution in:

43 (a) Selecting an agent.

44 (b) Establishing the scope and terms of the delegation,  
45 consistent with the purposes and terms of the trust.

46 (c) Reviewing the agent's actions periodically, in order to  
47 monitor the agent's performance and compliance with the terms of  
48 the delegation.

49 (3) A trustee who complies with subsection (1) and, when  
50 investment functions are delegated, s. 518.112, is not liable to  
51 the beneficiaries or to the trust for an action of the agent to  
52 whom the function was delegated.

53

54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete lines 14 - 16

57 and insert:

58 s. 736.0703, F.S.; authorizing a trustee to delegate investment  
59 functions to a cotrustee; providing an exception to  
60 circumstances under which an excluded trustee is otherwise not  
61 liable for the consequences of certain action; amending s.  
62 736.0807, F.S.; expanding the list of powers and duties that  
63 maybe delegated by a trustee; exempting a trustee who complies  
64 with certain provisions of state law from liability for the  
65 actions of an agent to whom a function was delegated; amending  
66 s. 736.0813, F.S.; specifying