

By Senator Gelber

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1 A bill to be entitled
2 An act relating to trust administration; amending s.
3 736.0103, F.S.; revising a definition to exclude
4 certain interests as beneficial interests; providing
5 construction; amending s. 736.0105, F.S.; providing an
6 additional limitation on terms of a trust prevailing
7 over provisions of the Florida Trust Code; amending s.
8 736.0302, F.S.; revising representation authority for
9 holders of a power of appointment; providing a
10 definition; amending s. 736.0306, F.S.; authorizing
11 trust instruments to authorize certain persons to
12 designate one or more persons to represent and bind a
13 beneficiary and receive certain information; amending
14 s. 736.0703, F.S.; revising provisions for absence of
15 liability of excluded trustees under certain
16 circumstances; amending s. 736.0813, F.S.; specifying
17 additional requirements for provision of a complete
18 copy of a trust instrument; providing an effective
19 date.

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

22
23 Section 1. Paragraph (b) of subsection (4) of section
24 736.0103, Florida Statutes, is amended to read:

25 736.0103 Definitions.—Unless the context otherwise
26 requires, in this code:

27 (4) "Beneficiary" means a person who:

28 (b) Holds a power of appointment over trust property in a
29 capacity other than that of trustee. An interest as a

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30 permissible appointee of a power of appointment, held by a
31 person in a capacity other than that of trustee, is not a
32 beneficial interest for purposes of this paragraph. Upon an
33 irrevocable exercise of a power of appointment, the interest of
34 a person in whose favor the appointment is made shall be
35 considered a present or future beneficial interest in a trust in
36 the same manner as if the interest had been included in the
37 trust instrument.

38 Section 2. Paragraph (f) of subsection (2) of section
39 736.0105, Florida Statutes, is amended to read:

40 736.0105 Default and mandatory rules.—

41 (2) The terms of a trust prevail over any provision of this
42 code except:

43 (f) The requirements under s. 736.0108(1) for the
44 designation of a principal place of administration of the trust
45 and the requirements under s. 736.0107 for the designation of a
46 jurisdiction the law of which determines the meaning and effect
47 of the terms of a trust.

48 Section 3. Section 736.0302, Florida Statutes, is amended
49 to read:

50 736.0302 Representation by holder of power of appointment.—

51 (1) The holder of a power of appointment may represent and
52 bind persons whose interests, as permissible appointees, takers
53 in default, or otherwise, are subject to the power.

54 (2) The takers in default of the exercise of a power of
55 appointment may represent and bind persons whose interests, as
56 permissible appointees, are subject to the power.

57 (3)~~(2)~~ Subsection (1) does not apply to:

58 (a) Any matter determined by the court to involve fraud or

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59 bad faith by the trustee;

60 ~~(b) A power of a trustee to distribute trust property; or~~

61 (b)(e) A power of appointment held by a person while the
62 person is the sole trustee.

63 (4) As used in this section, the term "power of
64 appointment" does not include a power of a trustee to make
65 discretionary distributions of trust property.

66 Section 4. Subsection (1) of section 736.0306, Florida
67 Statutes, is amended to read:

68 736.0306 Designated representative.—

69 (1) If specifically nominated ~~authorized~~ in the trust
70 instrument, one or more persons may be designated to represent
71 and bind a beneficiary and receive any notice, information,
72 accounting, or report. The trust instrument may also authorize
73 any person or persons, other than a trustee of the trust, to
74 designate one or more persons to represent and bind a
75 beneficiary and receive any notice, information, accounting, or
76 report.

77 Section 5. Subsection (9) of section 736.0703, Florida
78 Statutes, is amended to read:

79 736.0703 Cotrustees.—

80 (9) If the terms of a trust instrument provide for the
81 appointment of more than one trustee but confer upon one or more
82 of the trustees, to the exclusion of the others, the power to
83 direct or prevent specified actions of the trustees, the
84 excluded trustees shall act in accordance with the exercise of
85 the power. Except in cases of willful misconduct on the part of
86 the ~~directed~~ trustee with the authority to direct or prevent
87 actions of the trustees of which the excluded trustee has actual

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88 knowledge, an excluded trustee is not liable, individually or as
89 a fiduciary, for any consequence that results from compliance
90 with the exercise of the power, regardless of the information
91 available to the excluded trustees. The excluded trustees are
92 relieved of any obligation to review, inquire, investigate, or
93 make recommendations or evaluations with respect to the exercise
94 of the power. The trustee or trustees having the power to direct
95 or prevent actions of the trustees shall be liable to the
96 beneficiaries with respect to the exercise of the power as if
97 the excluded trustees were not in office and shall have the
98 exclusive obligation to account to and to defend any action
99 brought by the beneficiaries with respect to the exercise of the
100 power.

101 Section 6. Paragraph (c) of subsection (1) of section
102 736.0813, Florida Statutes, is amended to read:

103 736.0813 Duty to inform and account.—The trustee shall keep
104 the qualified beneficiaries of the trust reasonably informed of
105 the trust and its administration.

106 (1) The trustee's duty to inform and account includes, but
107 is not limited to, the following:

108 (c) Upon reasonable request, the trustee shall provide a
109 qualified beneficiary with a complete copy of the trust
110 instrument, which means a complete copy of the original trust
111 instrument including all restatements of and amendments to the
112 original trust instrument, whether or not any such restatements
113 or amendments contain current terms of the trust.

114
115 Paragraphs (a) and (b) do not apply to an irrevocable trust
116 created before the effective date of this code, or to a

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117 revocable trust that becomes irrevocable before the effective
118 date of this code. Paragraph (a) does not apply to a trustee who
119 accepts a trusteeship before the effective date of this code.

120 Section 7. This act shall take effect July 1, 2009.