

By the Committee on Judiciary; and Senator Gelber

590-02990A-09

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1 A bill to be entitled
2 An act relating to trust administration; amending s.
3 736.0103, F.S.; redefining the term "beneficiary" to
4 include a person having certain beneficial interests;
5 providing for construction; amending s. 736.0105,
6 F.S.; providing an additional limitation on terms of a
7 trust prevailing over provisions of the Florida Trust
8 Code; amending s. 736.0302, F.S.; revising
9 representation authority for holders of a power of
10 appointment; providing a definition; amending s.
11 736.0306, F.S.; authorizing trust instruments to
12 authorize certain persons to designate one or more
13 persons to represent and bind a beneficiary and
14 receive certain information; amending s. 736.0703,
15 F.S.; authorizing a trustee to delegate investment
16 functions to a cotrustee; providing an exception to
17 circumstances under which an excluded trustee is
18 otherwise not liable for the consequences of certain
19 action; amending s. 736.0807, F.S.; expanding the list
20 of powers and duties that may be delegated by a
21 trustee; exempting a trustee who complies with certain
22 provisions of state law from liability for the actions
23 of an agent to whom a function was delegated; amending
24 s. 736.1106, F.S.; clarifying the definition of the
25 term "distribution date" to specify the time at which
26 the right to possession or enjoyment arises; providing
27 an effective date.

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

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Section 1. Subsection (4) of section 736.0103, Florida Statutes, is amended to read:

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

(4) "Beneficiary" means a person who:

~~(a)~~ has a present or future beneficial interest in a trust, vested or contingent, ~~or~~

~~(b)~~ a person who holds a power of appointment over trust property in a capacity other than that of trustee. An interest as a permissible appointee of a power of appointment, held by a person in a capacity other than that of trustee, is not a beneficial interest for purposes of this subsection. Upon an irrevocable exercise of a power of appointment, the interest of a person in whose favor the appointment is made shall be considered a present or future beneficial interest in a trust in the same manner as if the interest had been included in the trust instrument.

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

736.0105 Default and mandatory rules.—

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

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

Section 3. Section 736.0302, Florida Statutes, is amended

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59 to read:

60 736.0302 Representation by holder of power of appointment.-

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

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

67 (3)~~(2)~~ Subsection (1) does not apply to:

68 (a) Any matter determined by the court to involve fraud or
69 bad faith by the trustee;

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

71 (b)~~(e)~~ A power of appointment held by a person while the
72 person is the sole trustee.

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

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

78 736.0306 Designated representative.-

79 (1) If specifically nominated ~~authorized~~ in the trust
80 instrument, one or more persons may be designated to represent
81 and bind a beneficiary and receive any notice, information,
82 accounting, or report. The trust instrument may also authorize
83 any person or persons, other than a trustee of the trust, to
84 designate one or more persons to represent and bind a
85 beneficiary and receive any notice, information, accounting, or
86 report.

87 Section 5. Subsections (5) and (9) of section 736.0703,

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88 Florida Statutes, are amended to read:

89 736.0703 Cotrustees.—

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

96 (9) If the terms of a trust instrument provide for the
97 appointment of more than one trustee but confer upon one or more
98 of the trustees, to the exclusion of the others, the power to
99 direct or prevent specified actions of the trustees, the
100 excluded trustees shall act in accordance with the exercise of
101 the power. Except in cases of willful misconduct on the part of
102 the ~~directed~~ trustee having the authority to direct or prevent
103 actions of the trustees of which the excluded trustee has actual
104 knowledge, an excluded trustee is not liable, individually or as
105 a fiduciary, for any consequence that results from compliance
106 with the exercise of the power, regardless of the information
107 available to the excluded trustees. The excluded trustees are
108 relieved of any obligation to review, inquire, investigate, or
109 make recommendations or evaluations with respect to the exercise
110 of the power. The trustee or trustees having the power to direct
111 or prevent actions of the trustees shall be liable to the
112 beneficiaries with respect to the exercise of the power as if
113 the excluded trustees were not in office and shall have the
114 exclusive obligation to account to and to defend any action
115 brought by the beneficiaries with respect to the exercise of the
116 power.

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

119 736.0807 Delegation by trustee.—

120 (1) A trustee may delegate duties and powers that a prudent
121 trustee of comparable skills could properly delegate under the
122 circumstances, including investment functions pursuant to s.
123 518.112. The trustee shall exercise reasonable care, skill, and
124 caution in:

125 (a) Selecting an agent.

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

128 (c) Reviewing the agent's actions periodically, in order to
129 monitor the agent's performance and compliance with the terms of
130 the delegation.

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

135 Section 7. Paragraph (b) of subsection (1) of section
136 736.1106, Florida Statutes, is amended to read:

137 736.1106 Antilapse; survivorship with respect to future
138 interests under terms of inter vivos and testamentary trusts;
139 substitute takers.—

140 (1) As used in this section, the term:

141 (b) "Distribution date," with respect to a future interest,
142 means the time when the future interest is to take effect ~~in~~
143 ~~possession or enjoyment~~. The distribution date need not occur at
144 the beginning or end of a calendar day, but can occur at a time
145 during the course of a day. The distribution date refers to the

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146 time at which the right to possession or enjoyment arises and is
147 not necessarily the time at which any benefit of the right is
148 realized.

149 Section 8. This act shall take effect July 1, 2009.