

ENROLLED
CS/HB 965

2009 Legislature

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 certain
4 interests as beneficial interests; providing construction;
5 amending s. 736.0105, F.S.; providing an additional
6 limitation on terms of a trust prevailing over provisions
7 of the Florida Trust Code; amending s. 736.0302, F.S.;
8 revising representation authority for holders of a power
9 of appointment; providing a definition; amending s.
10 736.0306, F.S.; authorizing trust instruments to authorize
11 certain persons to designate one or more persons to
12 represent and bind a beneficiary and receive certain
13 information; amending s. 736.0703, F.S.; authorizing a
14 cotrustee to delegate investment decisions to a cotrustee;
15 revising provisions for absence of liability of excluded
16 trustees under certain circumstances; amending s.
17 736.0807, F.S.; providing that a cotrustee who has
18 delegated investment functions is not liable for
19 investment decisions; amending s. 736.1106, F.S.; revising
20 a definition applicable to antilapse of a trust
21 distribution; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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

27 736.0103 Definitions.--Unless the context otherwise
28 requires, in this code:

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29 (4) "Beneficiary" means a person who~~+~~
30 ~~(a)~~ has a present or future beneficial interest in a
31 trust, vested or contingent,~~+~~ or who
32 ~~(b)~~ holds a power of appointment over trust property in a
33 capacity other than that of trustee. An interest as a
34 permissible appointee of a power of appointment, held by a
35 person in a capacity other than that of trustee, is not a
36 beneficial interest for purposes of this subsection. Upon an
37 irrevocable exercise of a power of appointment, the interest of
38 a person in whose favor the appointment is made shall be
39 considered a present or future beneficial interest in a trust in
40 the same manner as if the interest had been included in the
41 trust instrument.

42 Section 2. Paragraph (f) of subsection (2) of section
43 736.0105, Florida Statutes, is amended to read:

44 736.0105 Default and mandatory rules.--

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

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

52 Section 3. Section 736.0302, Florida Statutes, is amended
53 to read:

54 736.0302 Representation by holder of power of
55 appointment.--

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

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

62 (3)~~(2)~~ Subsection (1) does not apply to:

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

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

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

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

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

73 736.0306 Designated representative.--

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

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

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84 736.0703 Cotrustees.--

85 (5) A cotrustee may not delegate to another cotrustee the
86 performance of a function the settlor reasonably expected the
87 cotrustees to perform jointly, except that a cotrustee may
88 delegate investment functions to a cotrustee pursuant to and in
89 compliance with s. 518.112. A cotrustee may revoke a delegation
90 previously made.

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

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

114 736.0807 Delegation by trustee.--

115 (1) A trustee may delegate duties and powers that a
116 prudent trustee of comparable skills could properly delegate
117 under the circumstances, including investment functions pursuant
118 to s. 518.112. The trustee shall exercise reasonable care,
119 skill, and caution in:

120 (a) Selecting an agent.

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

123 (c) Reviewing the agent's actions periodically, in order
124 to monitor the agent's performance and compliance with the terms
125 of the delegation.

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

130 Section 7. Paragraph (b) of subsection (1) of section
131 736.1106, Florida Statutes, is amended to read:

132 736.1106 Antilapse; survivorship with respect to future
133 interests under terms of inter vivos and testamentary trusts;
134 substitute takers.--

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

136 (b) "Distribution date," with respect to a future
137 interest, means the time when the future interest is to take
138 effect ~~in possession or enjoyment~~. The distribution date need
139 not occur at the beginning or end of a calendar day, but can

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140 | occur at a time during the course of a day. The distribution
141 | date refers to the time that the right to possession or
142 | enjoyment arises and is not necessarily the time that any
143 | benefit of the right is realized.

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