



135468

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2010	.	
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The Committee on Judiciary (Baker) recommended the following:

Senate Amendment (with title amendment)

Between lines 115 and 116
insert:

Section 4. Section 736.04114, Florida Statutes, is created
to read:

736.04114 Limited judicial construction of irrevocable
trust with federal tax provisions.—

(1) Upon the application of a trustee or any qualified
beneficiary of a trust, a court at any time may construe the
terms of a trust that is not then revocable to define the
respective shares or determine beneficiaries, in accordance with
the intention of the settlor, if a disposition occurs during the



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14 applicable period and the trust contains a provision that:

15 (a) Includes a formula disposition referring to the
16 "unified credit," "estate tax exemption," "applicable exemption
17 amount," "applicable credit amount," "applicable exclusion
18 amount," "generation-skipping transfer tax exemption," "GST
19 exemption," "marital deduction," "maximum marital deduction,"
20 "unlimited marital deduction," or "maximum charitable
21 deduction";

22 (b) Measures a share of a trust based on the amount that
23 can pass free of federal estate tax or the amount that can pass
24 free of federal generation-skipping transfer tax;

25 (c) Otherwise makes a disposition referring to a charitable
26 deduction, marital deduction, or another provision of federal
27 estate tax or generation-skipping transfer tax law; or

28 (d) Appears to be intended to reduce or minimize federal
29 estate tax or generation-skipping transfer tax.

30 (2) For the purpose of this section:

31 (a) "Applicable period" means a period beginning January 1,
32 2010, and ending on the end of the day on the earlier of:

33 1. December 31, 2010; or

34 2. The day before the date that an act becomes law which
35 repeals or otherwise modifies or has the effect of repealing or
36 modifying s. 901 of The Economic Growth and Tax Relief
37 Reconciliation Act of 2001.

38 (b) A "disposition occurs" when an interest takes effect in
39 possession or enjoyment.

40 (3) In construing the trust, the court shall consider the
41 terms and purposes of the trust, the facts and circumstances
42 surrounding the creation of the trust, and the settlor's



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43 probable intent. In determining the settlor's probable intent,
44 the court may consider evidence relevant to the settlor's intent
45 even though the evidence contradicts an apparent plain meaning
46 of the trust instrument.

47 (4) This section does not apply to a disposition that is
48 specifically conditioned upon no federal estate or generation-
49 skipping transfer tax being imposed.

50 (5) Unless otherwise ordered by the court, during the
51 applicable period and without court order, the trustee
52 administering a trust containing one or more provisions
53 described in subsection (1) may:

54 (a) Delay or refrain from making any distribution;

55 (b) Incur and pay fees and costs reasonably necessary to
56 determine its duties and obligations, including compliance with
57 provisions of existing and reasonably anticipated future federal
58 tax laws; and

59 (c) Establish and maintain reserves for the payment of
60 these fees and costs and federal taxes.

61
62 The trustee is not liable for its actions as provided in this
63 subsection which are made or taken in good faith.

64 (6) The provisions of this section are in addition to, and
65 not in derogation of, rights under this code or the common law
66 to construe a trust.

67 (7) This section is remedial in order to provide a new or
68 modified legal remedy. This section applies retroactively and is
69 effective as of January 1, 2010.

70
71 ===== T I T L E A M E N D M E N T =====



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72 And the title is amended as follows:
73 Delete line 15
74 and insert:
75 providing a limitation; creating s. 736.04114, F.S.;
76 providing for interpretation of trusts not subject to
77 the federal estate tax; providing conditions;
78 providing definitions; providing criteria for a court
79 interpreting a trust; providing an exception; allowing
80 a trustee to take certain actions pending a
81 determination of trust distribution; limiting trustee
82 liability; providing for interpretation; providing for
83 retroactive effect; amending s. 736.0505, F.S.;