

By Senator Simmons

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1                                   A bill to be entitled  
2           An act relating to land trusts; creating s. 689.073,  
3           F.S., and transferring, renumbering, and amending s.  
4           689.071(4) and (5), F.S.; providing requirements  
5           relating to vesting of ownership in a trustee;  
6           providing exclusion and applicability; amending s.  
7           689.071, F.S.; revising and providing definitions;  
8           revising provisions relating to land trust transfers  
9           of real property and vesting of ownership in a  
10          trustee; prohibiting the operation of the statute of  
11          uses to execute a land trust or to vest the trust  
12          property under certain conditions; prohibiting the  
13          operation of the doctrine of merger to execute a land  
14          trust or to vest the trust property under certain  
15          conditions; providing conditions under which a  
16          beneficial interest is deemed real property; revising  
17          and providing rights, liabilities, and duties of land  
18          trust beneficiaries; authorizing certain beneficial  
19          ownership methods; providing for the perfection of  
20          security documents; providing that a trustee's legal  
21          and equitable title to the trust property is separate  
22          and distinct from the beneficiary's beneficial  
23          interest in the land trust and the trust property;  
24          prohibiting a lien, judgment, mortgage, security  
25          interest, or other encumbrance against one interest  
26          from automatically attaching to another interest;  
27          providing that the appointment of a guardian ad litem  
28          is not necessary in certain foreclosure litigation  
29          affecting the title to trust property of a land trust;

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30 conforming provisions to changes made by the act;  
31 deleting provisions relating to the applicability of  
32 certain successor trustee provisions; providing notice  
33 requirements; providing for the determination of  
34 applicable law for certain trusts; providing for  
35 applicability relating to Uniform Commercial Code  
36 financing statements; providing requirements for  
37 recording effectiveness; amending s. 736.0102, F.S.;  
38 revising and providing scope of the Florida Trust  
39 Code; providing a directive to the Division of Law  
40 Revision and Information; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Section 689.073, Florida Statutes, is created,  
45 and present subsections (4) and (5) of section 689.071, Florida  
46 Statutes, are transferred and renumbered as subsections (2) and  
47 (3), respectively, of section 689.073, Florida Statutes, and  
48 amended, to read:

49 689.073 Powers conferred on trustee in recorded  
50 instrument.-

51 (1) OWNERSHIP VESTS IN TRUSTEE.-Every conveyance, deed,  
52 mortgage, lease assignment, or other instrument heretofore or  
53 hereafter made, hereinafter referred to as the "recorded  
54 instrument," transferring any interest in real property,  
55 including, but not limited to, a leasehold or mortgagee  
56 interest, to any person or any corporation, bank, trust company,  
57 or other entity duly formed under the laws of its state of  
58 qualification, which recorded instrument designates the person,

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59 corporation, bank, trust company, or other entity "trustee" or  
60 "as trustee" and confers on the trustee the power and authority  
61 to protect, to conserve, to sell, to lease, to encumber, or  
62 otherwise to manage and dispose of the real property described  
63 in the recorded instrument, is effective to vest, and is  
64 declared to have vested, in such trustee full power and  
65 authority as granted and provided in the recorded instrument to  
66 deal in and with such property, or interest therein or any part  
67 thereof, held in trust under the recorded instrument.

68 (2)~~(4)~~ NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,  
69 transferee, assignee, or person obtaining satisfactions or  
70 releases or otherwise in any way dealing with the trustee with  
71 respect to the real property or any interest in such property  
72 held in trust under the recorded instrument, as hereinabove  
73 provided for, is not obligated to inquire into the  
74 identification or status of any named or unnamed beneficiaries,  
75 or their heirs or assigns to whom a trustee may be accountable  
76 under the terms of the recorded instrument, or under any  
77 unrecorded separate declarations or agreements collateral to the  
78 recorded instrument, whether or not such declarations or  
79 agreements are referred to therein; or to inquire into or  
80 ascertain the authority of such trustee to act within and  
81 exercise the powers granted under the recorded instrument; or to  
82 inquire into the adequacy or disposition of any consideration,  
83 if any is paid or delivered to such trustee in connection with  
84 any interest so acquired from such trustee; or to inquire into  
85 any of the provisions of any such unrecorded declarations or  
86 agreements.

87 (3)~~(5)~~ BENEFICIARY CLAIMS.—All persons dealing with the

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88 trustee under the recorded instrument as hereinabove provided  
89 take any interest transferred by the trustee thereunder, within  
90 the power and authority as granted and provided therein, free  
91 and clear of the claims of all the named or unnamed  
92 beneficiaries of such trust, and of any unrecorded declarations  
93 or agreements collateral thereto whether referred to in the  
94 recorded instrument or not, and of anyone claiming by, through,  
95 or under such beneficiaries. However, this section does not  
96 prevent a beneficiary of any such unrecorded collateral  
97 declarations or agreements from enforcing the terms thereof  
98 against the trustee.

99 (4) EXCLUSION.—This section does not apply to any deed,  
100 mortgage, or other instrument to which s. 689.07 applies.

101 (5) APPLICABILITY.—The section applies without regard to  
102 whether any reference is made in the recorded instrument to the  
103 beneficiaries of such trust or to any separate collateral  
104 unrecorded declarations or agreements, without regard to the  
105 provisions of any unrecorded trust agreement or declaration of  
106 trust, and without regard to whether the trust is governed by s.  
107 689.071 or chapter 736. This section applies both to recorded  
108 instruments that are recorded after the effective date of this  
109 act and to recorded instruments that were previously recorded  
110 and governed by similar provisions formerly contained in s.  
111 689.071(3), and any such recorded instrument purporting to  
112 confer power and authority on a trustee under such formerly  
113 effective provisions of s. 689.071(3) is valid and has the  
114 effect of vesting full power and authority in such trustee as  
115 provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended by

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117 this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the “Florida  
120 Land Trust Act.”

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) “Beneficial interest” means any interest, vested or  
123 contingent and regardless of how small or minimal such interest  
124 may be, in a land trust which is held by a beneficiary.

125 (b) “Beneficiary” means any person or entity having a  
126 beneficial interest in a land trust. A trustee may be a  
127 beneficiary of the land trust for which such trustee serves as  
128 trustee.

129 ~~(c) “Holder of the power of direction” means any person or~~  
130 ~~entity having the authority to direct the trustee to convey~~  
131 ~~property or interests, execute a mortgage, distribute proceeds~~  
132 ~~of a sale or financing, and execute documents incidental to the~~  
133 ~~administration of a land trust.~~

134 (c)(d) “Land trust” means any express written agreement or  
135 arrangement by which a use, confidence, or trust is declared of  
136 any land, or of any charge upon land, under which the title to  
137 real property, including, but not limited to, a leasehold or  
138 mortgagee interest, both legal and equitable, is vested in a  
139 trustee by a recorded instrument that confers on the trustee the  
140 power and authority prescribed in s. 689.073(1) and under which  
141 the trustee has no duties other than the following:

142 1. The duty to convey, sell, lease, mortgage, or deal with  
143 the trust property, or to exercise such other powers concerning  
144 the trust property as may be provided in the recorded  
145 instrument, in each case as directed by the beneficiaries or by

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146 the holder of the power of direction;

147 2. The duty to sell or dispose of the trust property at the  
148 termination of the trust;

149 3. The duty to perform ministerial and administrative  
150 functions delegated to the trustee in the trust agreement or by  
151 the beneficiaries or the holder of the power of direction; or

152 4. The duties required of a trustee under chapter 721, if  
153 the trust is a timeshare estate trust complying with s.  
154 721.08(2)(c)4. or a vacation club trust complying with s.  
155 721.53(1)(e);

156  
157 however, the duties of the trustee of a land trust created  
158 before the effective date of this act may exceed the limited  
159 duties listed in this paragraph to the extent authorized in  
160 subsection (12) subsection (3). ~~The recorded instrument does not~~  
161 ~~itself create an entity, regardless of whether the relationship~~  
162 ~~among the beneficiaries and the trustee is deemed to be an~~  
163 ~~entity under other applicable law.~~

164 (d) "Power of direction" means the authority of a person,  
165 as provided in the trust agreement, to direct the trustee of a  
166 land trust to convey property or interests, execute a lease or  
167 mortgage, distribute proceeds of a sale or financing, and  
168 execute documents incidental to the administration of a land  
169 trust.

170 (e) "Recorded instrument" has the same meaning as provided  
171 in s. 689.073(1).

172 (f) "Trust agreement" means the written agreement governing  
173 a land trust or other trust, including any amendments.

174 (g) "Trust property" means any interest in real property,

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175 including, but not limited to, a leasehold or mortgagee  
176 interest, conveyed by a recorded instrument to a trustee of a  
177 land trust or other trust.

178 (h)-(e) "Trustee" means the person ~~or entity~~ designated in a  
179 recorded instrument or trust agreement ~~trust instrument~~ to hold  
180 ~~legal and equitable~~ title to the trust property of a land trust  
181 or other trust.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument  
183 ~~conveyance, deed, mortgage, lease assignment, or other~~  
184 ~~instrument heretofore or hereafter made, hereinafter referred to~~  
185 ~~as the "recorded instrument,"~~ transferring any interest in real  
186 property to the trustee of a land trust and conferring upon the  
187 trustee the power and authority prescribed in s. 689.073(1), ~~in~~  
188 ~~this state, including, but not limited to, a leasehold or~~  
189 ~~mortgagee interest, to any person or any corporation, bank,~~  
190 ~~trust company, or other entity duly formed under the laws of its~~  
191 ~~state of qualification, in which recorded instrument the person,~~  
192 ~~corporation, bank, trust company, or other entity is designated~~  
193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in  
194 the recorded instrument to the beneficiaries of such land trust  
195 or to the trust agreement or any separate collateral unrecorded  
196 declarations or agreements, is effective to vest, and is hereby  
197 declared to have vested, in such trustee both legal and  
198 equitable title, and full rights of ownership, over the trust  
199 ~~real~~ property or interest therein, with full power and authority  
200 as granted and provided in the recorded instrument to deal in  
201 and with the trust property or interest therein or any part  
202 thereof. The recorded instrument does not itself create an  
203 entity, regardless of whether the relationship among the

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204 beneficiaries and the trustee is deemed to be an entity under  
205 other applicable law; ~~provided, the recorded instrument confers~~  
206 ~~on the trustee the power and authority to protect, to conserve,~~  
207 ~~to sell, to lease, to encumber, or otherwise to manage and~~  
208 ~~dispose of the real property described in the recorded~~  
209 ~~instrument.~~

210 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the  
211 statute of uses do not execute a land trust or vest the trust  
212 property in the beneficiary or beneficiaries of the land trust,  
213 notwithstanding any lack of duties on the part of the trustee or  
214 the otherwise passive nature of the land trust.

215 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger  
216 does not extinguish a land trust or vest the trust property in  
217 the beneficiary or beneficiaries of the land trust, regardless  
218 of whether the trustee is the sole beneficiary of the land  
219 trust.

220 (6) PERSONAL PROPERTY.—In all cases in which the recorded  
221 instrument or the trust agreement, as hereinabove provided,  
222 contains a provision defining and declaring the interests of  
223 beneficiaries of a land trust thereunder to be personal property  
224 only, such provision is ~~shall be~~ controlling for all purposes  
225 when such determination becomes an issue under the laws or in  
226 the courts of this state. If no such personal property  
227 designation appears in the recorded instrument or in the trust  
228 agreement, the interests of the land trust beneficiaries are  
229 real property.

230 (7) TRUSTEE LIABILITY.—In addition to any other limitation  
231 on personal liability existing pursuant to statute or otherwise,  
232 the provisions of ss. 736.08125 and 736.1013 apply to the



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233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.—

235 (a) Except as provided in this section, the beneficiaries  
236 of a land trust are not liable, solely by being beneficiaries,  
237 under a judgment, decree, or order of court or in any other  
238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a  
240 land trust is not liable to the land trust's trustee or to any  
241 other beneficiary for the beneficiary's good faith reliance on  
242 the provisions of the trust agreement. A beneficiary's duties  
243 and liabilities under a land trust may be expanded or restricted  
244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust  
246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial interest  
248 in a particular portion or parcel of the trust property of a  
249 land trust;

250 b. A particular person may be the holder of the power of  
251 direction with respect to the trustee's actions concerning a  
252 particular portion or parcel of the trust property of a land  
253 trust; and

254 c. The beneficiaries may own specified proportions or  
255 percentages of the beneficial interest in the trust property or  
256 in particular portions or parcels of the trust property of a  
257 land trust.

258 2. Multiple beneficiaries may own a beneficial interest in  
259 a land trust as tenants in common, joint tenants with right of  
260 survivorship, or tenants by the entireties.

261 (c) If a beneficial interest in a land trust is determined

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262 to be personal property as provided in subsection (6), chapter  
263 679 applies to the perfection of any security interest in that a  
264 beneficial interest in a land trust. If a beneficial interest in  
265 a land trust is determined to be real property as provided in  
266 subsection (6), then to perfect a lien or security interest  
267 against that beneficial interest, the mortgage, deed of trust,  
268 security agreement, or other similar security document must be  
269 recorded in the public records of the county that is specified  
270 for such security documents in the recorded instrument or in a  
271 declaration of trust or memorandum of such declaration of trust  
272 recorded in the public records of the same county as the  
273 recorded instrument. If no county is so specified for recording  
274 such security documents, the proper county for recording such a  
275 security document against a beneficiary's interest in any trust  
276 property is the county where the trust property is located. The  
277 perfection of a lien or security interest in a beneficial  
278 interest in a land trust does not affect, attach to, or encumber  
279 the legal or equitable title of the trustee in the trust  
280 property and does not impair or diminish the authority of the  
281 trustee under the recorded instrument, and parties dealing with  
282 the trustee are not required to inquire into the terms of the  
283 unrecorded trust agreement or any lien or security interest  
284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust  
286 property of a land trust is separate and distinct from the  
287 beneficial interest of a beneficiary in the land trust and in  
288 the trust property. A lien, judgment, mortgage, security  
289 interest, or other encumbrance attaching to the trustee's legal  
290 and equitable title to the trust property of a land trust does

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291 not attach to the beneficial interest of any beneficiary; and  
292 any lien, judgment, mortgage, security interest, or other  
293 encumbrance against a beneficiary or beneficial interest does  
294 not attach to the legal or equitable title of the trustee to the  
295 trust property held under a land trust, unless the lien,  
296 judgment, mortgage, security interest, or other encumbrance by  
297 its terms or by operation of other law attaches to both the  
298 interest of the trustee and the interest of such beneficiary. A  
299 ~~beneficiary's duties and liabilities may be expanded or~~  
300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a  
302 beneficiary of a land trust transfers or encumbers any the  
303 beneficial interest in the land trust does not transfer or  
304 encumber the legal or equitable title of the trustee to the  
305 trust property and does not diminish or impair the authority of  
306 the trustee under the terms of the recorded instrument. Parties  
307 dealing with the trustee of a land trust are not required to  
308 inquire into the terms of the unrecorded trust agreement.

309 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~  
310 ~~recorded instrument~~ for a land trust may provide that one or  
311 more persons ~~or entities~~ have the power to direct the trustee to  
312 convey property or interests, execute a mortgage, distribute  
313 proceeds of a sale or financing, and execute documents  
314 incidental to administration of the land trust. The power of  
315 direction, unless provided otherwise in the ~~land~~ trust agreement  
316 of the land trust, is conferred upon the holders of the power  
317 for the use and benefit of all holders of any beneficial  
318 interest in the land trust. In the absence of a provision in the  
319 ~~land~~ trust agreement of a land trust to the contrary, the power

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320 of direction shall be in accordance with the percentage of  
321 individual ownership. In exercising the power of direction, the  
322 holders of the power of direction are presumed to act in a  
323 fiduciary capacity for the benefit of all holders of any  
324 beneficial interest in the land trust, unless otherwise provided  
325 in the ~~land~~ trust agreement. A beneficial interest in a land  
326 trust is indefeasible, and the power of direction may not be  
327 exercised so as to alter, amend, revoke, terminate, defeat, or  
328 otherwise affect or change the enjoyment of any beneficial  
329 interest in a land trust.

330 (g) A land trust ~~relating to real estate~~ does not fail, and  
331 any use relating to the trust property ~~real estate~~ may not be  
332 defeated, because beneficiaries are not specified by name in the  
333 recorded instrument ~~deed of conveyance~~ to the trustee or because  
334 duties are not imposed upon the trustee. The power conferred by  
335 any recorded instrument ~~deed of conveyance~~ on a trustee of a  
336 land trust to sell, lease, encumber, or otherwise dispose of  
337 property described in the recorded instrument ~~deed~~ is effective,  
338 and a person dealing with the trustee of a land trust is not  
339 required to inquire any further into the right of the trustee to  
340 act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be  
342 entitled to the homestead tax exemption even if the homestead is  
343 held by a trustee in a land trust, provided the beneficiary  
344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other  
346 litigation affecting the title to trust property of a land  
347 trust, the appointment of a guardian ad litem is not necessary  
348 to represent the interest of any beneficiary.

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349 (9) SUCCESSOR TRUSTEE.—

350 ~~(a) The provisions of s. 736.0705 relating to the~~  
351 ~~resignation of a trustee do not apply to the appointment of a~~  
352 ~~successor trustee under this section.~~

353 (a) ~~(b)~~ If the recorded instrument and the unrecorded ~~land~~  
354 trust agreement are silent as to the appointment of a successor  
355 trustee of a land trust in the event of the death, incapacity,  
356 resignation, or termination due to dissolution of a ~~land~~ trustee  
357 or if a ~~land~~ trustee is unable to serve as trustee of a land  
358 trust, one or more persons ~~or entities~~ having the power of  
359 ~~direction of the land trust agreement~~ may appoint a successor  
360 trustee or trustees of the land trust by filing a declaration of  
361 appointment of a successor trustee or trustees in the public  
362 records of ~~office of the recorder of deeds in~~ the county in  
363 which the trust property is located. The declaration must be  
364 signed by a beneficiary or beneficiaries of the land trust and  
365 by the each successor trustee or trustees, must be acknowledged  
366 in the manner provided for acknowledgment of deeds, and must  
367 contain:

368 1. The legal description of the trust property.

369 2. The name and address of the former trustee.

370 3. The name and address of the each successor trustee or  
371 trustees.

372 4. A statement that ~~each successor trustee has been~~  
373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of  
374 direction of the land trust appointed the successor trustee or  
375 trustees, together with an acceptance of appointment by the each  
376 successor trustee or trustees.

377 (b) ~~(e)~~ If the recorded instrument is silent as to the

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378 appointment of a successor trustee or trustees of a land trust  
379 but an unrecorded ~~land~~ trust agreement provides for the  
380 appointment of a successor trustee or trustees in the event of  
381 the death, incapacity, resignation, or termination due to  
382 dissolution of the ~~land~~ trustee, of a land trust, then upon the  
383 appointment of any successor trustee pursuant to the terms of  
384 the unrecorded ~~land~~ trust agreement, the ~~each~~ successor trustee  
385 or trustees shall file a declaration of appointment of a  
386 successor trustee in the public records of ~~office of the~~  
387 ~~recorder of deeds~~ in the county in which the trust property is  
388 located. The declaration must be signed by both the former  
389 trustee and the ~~each~~ successor trustee or trustees, must be  
390 acknowledged in the manner provided for acknowledgment of deeds,  
391 and must contain:

- 392 1. The legal description of the trust property.
- 393 2. The name and address of the former trustee.
- 394 3. The name and address of the successor trustee or  
395 trustees.
- 396 4. A statement of resignation by the former trustee and a  
397 statement of acceptance of appointment by the ~~each~~ successor  
398 trustee or trustees.
- 399 5. A statement that the ~~each~~ successor trustee or trustees  
400 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~  
401 trust agreement.

402

403 If the appointment of any successor trustee of a land trust is  
404 due to the death or incapacity of the former trustee, the  
405 declaration need not be signed by the former trustee and a copy  
406 of the death certificate or a statement that the former trustee

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407 is incapacitated or unable to serve must be attached to or  
408 included in the declaration, as applicable.

409 (c)~~(d)~~ If the recorded instrument provides for the  
410 appointment of any successor trustee of a land trust and any  
411 successor trustee is appointed in accordance with the recorded  
412 instrument, no additional declarations of appointment of any  
413 successor trustee are required under this section.

414 (d)~~(e)~~ Each successor ~~land~~ trustee appointed with respect  
415 to a land trust is fully vested with all the estate, properties,  
416 rights, powers, trusts, duties, and obligations of the  
417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee  
418 of a land trust is not under any duty to inquire into the acts  
419 or omissions of a predecessor trustee and is not liable for any  
420 act or failure to act of a predecessor trustee. A person dealing  
421 with any successor trustee of a land trust pursuant to a  
422 declaration filed under this section is not obligated to inquire  
423 into or ascertain the authority of the successor trustee to act  
424 within or exercise the powers granted under the recorded  
425 instruments or any unrecorded trust agreement ~~declarations or~~  
426 ~~agreements~~.

427 (e)~~(f)~~ A ~~land~~ trust agreement may provide that the trustee  
428 of a land trust, when directed to do so by the holder of the  
429 power of direction or by the beneficiaries of the land trust or  
430 legal representatives of the beneficiaries, may convey the trust  
431 property directly to another trustee on behalf of the  
432 beneficiaries or to another representative named in such  
433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or mortgage

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436 against ~~in~~ a beneficial interest in a land trust or by a  
437 mortgage on ~~land~~ trust property of a land trust, the validity or  
438 enforceability of the debt, security interest, or mortgage and  
439 the rights, remedies, powers, and duties of the creditor with  
440 respect to the debt or the security are not affected by the fact  
441 that the creditor and the trustee are the same person ~~or entity~~,  
442 and the creditor may extend credit, obtain any necessary  
443 security interest or mortgage, and acquire and deal with the  
444 property comprising the security as though the creditor were not  
445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary  
447 duty to the beneficiaries, and it is not evidence of a breach of  
448 any fiduciary duty owed by the trustee to the beneficiaries for  
449 a trustee to be or become a secured or unsecured creditor of the  
450 land trust, the beneficiary of the land trust, or a third party  
451 whose debt to such creditor is guaranteed by a beneficiary of  
452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given to  
454 a trustee of a land trust regarding trust property by a person  
455 who is not a party to the trust agreement must identify the  
456 trust property to which the notice pertains or include the name  
457 and date of the land trust to which the notice pertains, if such  
458 information is shown on the recorded instrument for such trust  
459 property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise  
461 provided in this section, chapter 736 does not apply to a land  
462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section if  
464 there is no recorded instrument that confers on the trustee the



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465 power and authority prescribed in s. 689.073(1).

466 (b) For a trust created before the effective date of this  
467 act:

468 1. The trust is a land trust governed by this section if a  
469 recorded instrument confers on the trustee the power and  
470 authority described in s. 689.073(1) and if:

471 a. The recorded instrument or the trust agreement expressly  
472 provides that the trust is a land trust; or

473 b. The intent of the parties that the trust be a land trust  
474 is discerned from the trust agreement or the recorded  
475 instrument;

476  
477 without regard to whether the trustee's duties under the trust  
478 agreement are greater than those limited duties described in s.  
479 689.071(2)(c).

480 2. The trust is not a land trust governed by this section  
481 if:

482 a. The recorded instrument or the trust agreement expressly  
483 provides that the trust is to be governed by chapter 736, or by  
484 any predecessor trust code or other trust law other than this  
485 section; or

486 b. The intent of the parties that the trust be governed by  
487 chapter 736, or by any predecessor trust code or other trust law  
488 other than this section, is discerned from the trust agreement  
489 or the recorded instrument;

490  
491 without regard to whether the trustee's duties under the trust  
492 agreement are greater than those limited duties listed in s.  
493 689.071(2)(c), and without consideration of any references in

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494 the trust agreement to provisions of chapter 736 made applicable  
495 to the trust by chapter 721, if the trust is a timeshare estate  
496 trust complying with s. 721.08(2)(c)4. or a vacation club trust  
497 complying with s. 721.53(1)(e).

498 3. Solely for the purpose of determining the law governing  
499 a trust under subparagraph 1. or subparagraph 2., the  
500 determination shall be made without consideration of any  
501 amendment to the trust agreement made on or after the effective  
502 date of this act, except as provided in paragraph (d).

503 4. If the determination of whether a trust is a land trust  
504 governed by this section cannot be made under either  
505 subparagraph 1. or subparagraph 2., the determination shall be  
506 made under paragraph (c) as if the trust was created on or after  
507 the effective date of this act.

508 (c) If a recorded instrument confers on the trustee the  
509 power and authority described in s. 689.073(1) and the trust was  
510 created on or after the effective date of this act, the trust  
511 shall be determined to be a land trust governed by this section  
512 only if the trustee's duties under the trust agreement,  
513 including any amendment made on or after such date, are greater  
514 than those limited duties described in s. 689.071(2)(c).

515 (d) If the trust agreement for a land trust created before  
516 the effective date of this act is amended on or after such date  
517 to add to or increase the duties of the trustee beyond the  
518 duties provided in the trust agreement as of the effective date  
519 of this act, the trust shall remain a land trust governed by  
520 this section only if the additional or increased duties of the  
521 trustee implemented by the amendment are greater than those  
522 limited duties described in s. 689.071(2)(c).

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523       (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section  
524 does not render ineffective any effective Uniform Commercial  
525 Code financing statement filed before July 1, 2014, to perfect a  
526 security interest in a beneficial interest in a land trust that  
527 is determined to be real property as provided in subsection (6),  
528 but such a financing statement ceases to be effective at the  
529 earlier of July 1, 2019, or the time the financing statement  
530 would have ceased to be effective under the law of the  
531 jurisdiction in which it is filed, and the filing of a Uniform  
532 Commercial Code continuation statement after July 1, 2014, does  
533 not continue the effectiveness of such a financing statement.  
534 The recording of a mortgage, deed of trust, security agreement,  
535 or other similar security document against such a beneficial  
536 interest that is real property in the public records specified  
537 in paragraph (8)(c) continues the effectiveness and priority of  
538 a financing statement filed against such a beneficial interest  
539 before July 1, 2014, if:

540       (a) The recording of the security document in that county  
541 is effective to perfect a lien on such beneficial interest under  
542 paragraph (8)(c);

543       (b) The recorded security document identifies a financing  
544 statement filed before July 1, 2014, by indicating the office in  
545 which the financing statement was filed and providing the dates  
546 of filing and the file numbers, if any, of the financing  
547 statement and of the most recent continuation statement filed  
548 with respect to the financing statement; and

549       (c) The recorded security document indicates that such  
550 financing statement filed before July 1, 2014, remains  
551 effective.

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552  
553 If no original security document bearing the debtor's signature  
554 is readily available for recording in the public records, a  
555 secured party may proceed under this subsection with such  
556 financing statement filed before July 1, 2014, by recording a  
557 copy of a security document verified by the secured party as  
558 being a true and correct copy of an original authenticated by  
559 the debtor. This subsection does not apply to the perfection of  
560 a security interest in any beneficial interest in a land trust  
561 that is determined to be personal property under subsection (6).

562 (14)~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and  
563 shall be given a liberal interpretation to effectuate the intent  
564 and purposes hereinabove expressed.

565 (15)~~(12)~~ EXCLUSION.—This act does not apply to any deed,  
566 mortgage, or other instrument to which s. 689.07 applies.

567 Section 3. Section 736.0102, Florida Statutes, is amended  
568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this code  
571 applies to express trusts, charitable or noncharitable, and  
572 trusts created pursuant to a law, judgment, or decree that  
573 requires the trust to be administered in the manner of an  
574 express trust.

575 (2) This code does not apply to constructive or resulting  
576 trusts; conservatorships; custodial arrangements pursuant to the  
577 Florida Uniform Transfers to Minors Act; business trusts  
578 providing for certificates to be issued to beneficiaries; common  
579 trust funds; ~~land trusts under s. 689.071, except to the extent~~  
580 ~~provided in s. 689.071(7);~~ trusts created by the form of the

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581 account or by the deposit agreement at a financial institution;  
582 voting trusts; security arrangements; liquidation trusts; trusts  
583 for the primary purpose of paying debts, dividends, interest,  
584 salaries, wages, profits, pensions, or employee benefits of any  
585 kind; and any arrangement under which a person is nominee or  
586 escrowee for another.

587 (3) This code does not apply to any land trust under s.  
588 689.071, except to the extent provided in s. 689.071(7), s.  
589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its  
590 creation by chapter 736, former chapter 737, or any prior trust  
591 statute superseded or replaced by any provision of former  
592 chapter 737, is not a land trust regardless of any amendment or  
593 modification of the trust, any change in the assets held in the  
594 trust, or any continuing trust resulting from the distribution  
595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is  
597 directed to replace the phrase "the effective date of this act"  
598 wherever it occurs in this act with such date.

599 Section 5. This act shall take effect upon becoming a law.