

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Rodríguez, J. offered the following:

**Amendment (with title amendment)**

5 Remove lines 186-599 and insert:

6 property to the trustee of a land trust and conferring upon the  
 7 trustee the power and authority prescribed in s. 689.073(1), ~~in~~  
 8 ~~this state, including, but not limited to, a leasehold or~~  
 9 ~~mortgagee interest, to any person or any corporation, bank,~~  
 10 ~~trust company, or other entity duly formed under the laws of its~~  
 11 ~~state of qualification, in which recorded instrument the person,~~  
 12 ~~corporation, bank, trust company, or other entity is designated~~  
 13 ~~"trustee" or "as trustee,"~~ whether or not reference is made in  
 14 the recorded instrument to the beneficiaries of such land trust  
 15 or to the trust agreement or any separate collateral unrecorded  
 16 declarations or agreements, is effective to vest, and is hereby  
 17 declared to have vested, in such trustee both legal and  
 18 equitable title, and full rights of ownership, over the trust  
 19 ~~real~~ property or interest therein, with full power and authority  
 20 as granted and provided in the recorded instrument to deal in

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21 and with the trust property or interest therein or any part  
22 thereof. The recorded instrument does not itself create an  
23 entity, regardless of whether the relationship among the  
24 beneficiaries and the trustee is deemed to be an entity under  
25 other applicable law; ~~provided, the recorded instrument confers~~  
26 ~~on the trustee the power and authority to protect, to conserve,~~  
27 ~~to sell, to lease, to encumber, or otherwise to manage and~~  
28 ~~dispose of the real property described in the recorded~~  
29 ~~instrument.~~

30 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the  
31 statute of uses do not execute a land trust or vest the trust  
32 property in the beneficiary or beneficiaries of the land trust,  
33 notwithstanding any lack of duties on the part of the trustee or  
34 the otherwise passive nature of the land trust.

35 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of  
36 merger does not extinguish a land trust or vest the trust  
37 property in the beneficiary or beneficiaries of the land trust,  
38 regardless of whether the trustee is the sole beneficiary of the  
39 land trust.

40 (6) PERSONAL PROPERTY.—In all cases in which the recorded  
41 instrument or the trust agreement, as hereinabove provided,  
42 contains a provision defining and declaring the interests of  
43 beneficiaries of a land trust ~~thereunder~~ to be personal property  
44 only, such provision is ~~shall be~~ controlling for all purposes  
45 when such determination becomes an issue under the laws or in  
46 the courts of this state. If no such personal property  
47 designation appears in the recorded instrument or in the trust

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48 agreement, the interests of the land trust beneficiaries are  
49 real property.

50 (7) TRUSTEE LIABILITY.—In addition to any other limitation  
51 on personal liability existing pursuant to statute or otherwise,  
52 the provisions of ss. 736.08125 and 736.1013 apply to the  
53 trustee of a land trust created pursuant to this section.

54 (8) LAND TRUST BENEFICIARIES.—

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

59 ~~(b)~~ Any beneficiary acting under the trust agreement of a  
60 land trust is not liable to the land trust's trustee or to any  
61 other beneficiary for the beneficiary's good faith reliance on  
62 the provisions of the trust agreement. A beneficiary's duties  
63 and liabilities under a land trust may be expanded or restricted  
64 in a trust agreement or beneficiary agreement.

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

67 a. A particular beneficiary may own the beneficial  
68 interest in a particular portion or parcel of the trust property  
69 of a land trust;

70 b. A particular person may be the holder of the power of  
71 direction with respect to the trustee's actions concerning a  
72 particular portion or parcel of the trust property of a land  
73 trust; and

74 c. The beneficiaries may own specified proportions or  
75 percentages of the beneficial interest in the trust property or

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76 in particular portions or parcels of the trust property of a  
77 land trust.

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

81 (c) If a beneficial interest in a land trust is determined  
82 to be personal property as provided in subsection (6), chapter  
83 679 applies to the perfection of any security interest in that a  
84 beneficial interest in a land trust. If a beneficial interest in  
85 a land trust is determined to be real property as provided in  
86 subsection (6), then to perfect a lien or security interest  
87 against that beneficial interest, the mortgage, deed of trust,  
88 security agreement, or other similar security document must be  
89 recorded in the public records of the county that is specified  
90 for such security documents in the recorded instrument or in a  
91 declaration of trust or memorandum of such declaration of trust  
92 recorded in the public records of the same county as the  
93 recorded instrument. If no county is so specified for recording  
94 such security documents, the proper county for recording such a  
95 security document against a beneficiary's interest in any trust  
96 property is the county where the trust property is located. The  
97 perfection of a lien or security interest in a beneficial  
98 interest in a land trust does not affect, attach to, or encumber  
99 the legal or equitable title of the trustee in the trust  
100 property and does not impair or diminish the authority of the  
101 trustee under the recorded instrument, and parties dealing with  
102 the trustee are not required to inquire into the terms of the

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103 unrecorded trust agreement or any lien or security interest  
104 against a beneficial interest in the land trust.

105 (d) The trustee's legal and equitable title to the trust  
106 property of a land trust is separate and distinct from the  
107 beneficial interest of a beneficiary in the land trust and in  
108 the trust property. A lien, judgment, mortgage, security  
109 interest, or other encumbrance attaching to the trustee's legal  
110 and equitable title to the trust property of a land trust does  
111 not attach to the beneficial interest of any beneficiary; and  
112 any lien, judgment, mortgage, security interest, or other  
113 encumbrance against a beneficiary or beneficial interest does  
114 not attach to the legal or equitable title of the trustee to the  
115 trust property held under a land trust, unless the lien,  
116 judgment, mortgage, security interest, or other encumbrance by  
117 its terms or by operation of other law attaches to both the  
118 interest of the trustee and the interest of such beneficiary. A  
119 ~~beneficiary's duties and liabilities may be expanded or~~  
120 ~~restricted in a trust agreement or beneficiary agreement.~~

121 (e) Any subsequent document appearing of record in which a  
122 beneficiary of a land trust transfers or encumbers any ~~the~~  
123 beneficial interest in the land trust does not transfer or  
124 encumber the legal or equitable title of the trustee to the  
125 trust property and does not diminish or impair the authority of  
126 the trustee under the terms of the recorded instrument. Parties  
127 dealing with the trustee of a land trust are not required to  
128 inquire into the terms of the unrecorded trust agreement.

129 (f) ~~The An unrecorded~~ trust agreement ~~giving rise to a~~  
130 ~~recorded instrument~~ for a land trust may provide that one or

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131 more persons ~~or entities~~ have the power to direct the trustee to  
132 convey property or interests, execute a mortgage, distribute  
133 proceeds of a sale or financing, and execute documents  
134 incidental to administration of the land trust. The power of  
135 direction, unless provided otherwise in the ~~land~~ trust agreement  
136 of the land trust, is conferred upon the holders of the power  
137 for the use and benefit of all holders of any beneficial  
138 interest in the land trust. In the absence of a provision in the  
139 ~~land~~ trust agreement of a land trust to the contrary, the power  
140 of direction shall be in accordance with the percentage of  
141 individual ownership. In exercising the power of direction, the  
142 holders of the power of direction are presumed to act in a  
143 fiduciary capacity for the benefit of all holders of any  
144 beneficial interest in the land trust, unless otherwise provided  
145 in the ~~land~~ trust agreement. A beneficial interest in a land  
146 trust is indefeasible, and the power of direction may not be  
147 exercised so as to alter, amend, revoke, terminate, defeat, or  
148 otherwise affect or change the enjoyment of any beneficial  
149 interest in a land trust.

150 (g) A land trust ~~relating to real estate~~ does not fail,  
151 and any use relating to the trust property ~~real estate~~ may not  
152 be defeated, because beneficiaries are not specified by name in  
153 the recorded instrument ~~deed of conveyance~~ to the trustee or  
154 because duties are not imposed upon the trustee. The power  
155 conferred by any recorded instrument ~~deed of conveyance~~ on a  
156 trustee of a land trust to sell, lease, encumber, or otherwise  
157 dispose of property described in the recorded instrument ~~deed~~ is  
158 effective, and a person dealing with the trustee of a land trust

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159 is not required to inquire any further into the right of the  
160 trustee to act or the disposition of any proceeds.

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

165 (i) In a foreclosure against trust property or other  
166 litigation affecting the title to trust property of a land  
167 trust, the appointment of a guardian ad litem is not necessary  
168 to represent the interest of any beneficiary.

169 (9) SUCCESSOR TRUSTEE.—

170 ~~(a) The provisions of s. 736.0705 relating to the~~  
171 ~~resignation of a trustee do not apply to the appointment of a~~  
172 ~~successor trustee under this section.~~

173 (a)(b) If the recorded instrument and the unrecorded ~~land~~  
174 trust agreement are silent as to the appointment of a successor  
175 trustee of a land trust in the event of the death, incapacity,  
176 resignation, or termination due to dissolution of a ~~land~~ trustee  
177 or if a ~~land~~ trustee is unable to serve as trustee of a land  
178 trust, one or more persons ~~or entities~~ having the power of  
179 ~~direction of the land trust agreement~~ may appoint a successor  
180 trustee or trustees of the land trust by filing a declaration of  
181 appointment of a successor trustee or trustees in the public  
182 records of ~~office of the recorder of deeds in the~~ county in  
183 which the trust property is located. The declaration must be  
184 signed by a beneficiary or beneficiaries of the land trust and  
185 by the ~~each~~ successor trustee or trustees, must be acknowledged

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186 in the manner provided for acknowledgment of deeds, and must  
187 contain:

188 1. The legal description of the trust property.

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

190 3. The name and address of the each successor trustee or  
191 trustees.

192 4. A statement that ~~each successor trustee has been~~  
193 ~~appointed by~~ one or more persons ~~or entities~~ having the power of  
194 direction of the land trust appointed the successor trustee or  
195 trustees, together with an acceptance of appointment by the each  
196 successor trustee or trustees.

197 (b)(e) If the recorded instrument is silent as to the  
198 appointment of a successor trustee or trustees of a land trust  
199 but an unrecorded ~~land~~ trust agreement provides for the  
200 appointment of a successor trustee or trustees in the event of  
201 the death, incapacity, resignation, or termination due to  
202 dissolution of the ~~land~~ trustee, of a land trust, then upon the  
203 appointment of any successor trustee pursuant to the terms of  
204 the unrecorded ~~land~~ trust agreement, the each successor trustee  
205 or trustees shall file a declaration of appointment of a  
206 successor trustee in the public records of ~~office of the~~  
207 ~~recorder of deeds in~~ the county in which the trust property is  
208 located. The declaration must be signed by both the former  
209 trustee and the each successor trustee or trustees, must be  
210 acknowledged in the manner provided for acknowledgment of deeds,  
211 and must contain:

212 1. The legal description of the trust property.

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



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214 3. The name and address of the successor trustee or  
215 trustees.

216 4. A statement of resignation by the former trustee and a  
217 statement of acceptance of appointment by the ~~each~~ successor  
218 trustee or trustees.

219 5. A statement that the ~~each~~ successor trustee or trustees  
220 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~  
221 trust agreement.

222

223 If the appointment of any successor trustee of a land trust is  
224 due to the death or incapacity of the former trustee, the  
225 declaration need not be signed by the former trustee and a copy  
226 of the death certificate or a statement that the former trustee  
227 is incapacitated or unable to serve must be attached to or  
228 included in the declaration, as applicable.

229 ~~(c)-(d)~~ If the recorded instrument provides for the  
230 appointment of any successor trustee of a land trust and any  
231 successor trustee is appointed in accordance with the recorded  
232 instrument, no additional declarations of appointment of any  
233 successor trustee are required under this section.

234 ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect  
235 to a land trust is fully vested with all the estate, properties,  
236 rights, powers, trusts, duties, and obligations of the  
237 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee  
238 of a land trust is not under any duty to inquire into the acts  
239 or omissions of a predecessor trustee and is not liable for any  
240 act or failure to act of a predecessor trustee. A person dealing  
241 with any successor trustee of a land trust pursuant to a

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242 declaration filed under this section is not obligated to inquire  
243 into or ascertain the authority of the successor trustee to act  
244 within or exercise the powers granted under the recorded  
245 instruments or any unrecorded trust agreement ~~declarations or~~  
246 ~~agreements~~.

247 ~~(e)-(f)~~ A ~~land~~ trust agreement may provide that the trustee  
248 of a land trust, when directed to do so by the holder of the  
249 power of direction or by the beneficiaries of the land trust or  
250 legal representatives of the beneficiaries, may convey the trust  
251 property directly to another trustee on behalf of the  
252 beneficiaries or to another representative named in such  
253 directive ~~others named by the beneficiaries~~.

254 (10) TRUSTEE AS CREDITOR.-

255 (a) If a debt is secured by a security interest or  
256 mortgage against ~~in~~ a beneficial interest in a land trust or by  
257 a mortgage on ~~land~~ trust property of a land trust, the validity  
258 or enforceability of the debt, security interest, or mortgage  
259 and the rights, remedies, powers, and duties of the creditor  
260 with respect to the debt or the security are not affected by the  
261 fact that the creditor and the trustee are the same person ~~or~~  
262 ~~entity~~, and the creditor may extend credit, obtain any necessary  
263 security interest or mortgage, and acquire and deal with the  
264 property comprising the security as though the creditor were not  
265 the trustee.

266 (b) A trustee of a land trust does not breach a fiduciary  
267 duty to the beneficiaries, and it is not evidence of a breach of  
268 any fiduciary duty owed by the trustee to the beneficiaries for  
269 a trustee to be or become a secured or unsecured creditor of the

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270 land trust, the beneficiary of the land trust, or a third party  
271 whose debt to such creditor is guaranteed by a beneficiary of  
272 the land trust.

273 (11) NOTICES TO TRUSTEE.—Any notice required to be given  
274 to a trustee of a land trust regarding trust property by a  
275 person who is not a party to the trust agreement must identify  
276 the trust property to which the notice pertains or include the  
277 name and date of the land trust to which the notice pertains, if  
278 such information is shown on the recorded instrument for such  
279 trust property.

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

283 (a) A trust is not a land trust governed by this section  
284 if there is no recorded instrument that confers on the trustee  
285 the power and authority prescribed in s 689.073(1).

286 (b) For a trust created before the effective date of this  
287 act:

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

291 a. The recorded instrument or the trust agreement  
292 expressly provides that the trust is a land trust; or

293 b. The intent of the parties that the trust be a land  
294 trust is discerned from the trust agreement or the recorded  
295 instrument;

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297 without regard to whether the trustee's duties under the trust  
298 agreement are greater than those limited duties described in s.  
299 689.071(2)(c).

300 2. The trust is not a land trust governed by this section  
301 if:

302 a. The recorded instrument or the trust agreement  
303 expressly provides that the trust is to be governed by chapter  
304 736, or by any predecessor trust code or other trust law other  
305 than this section; or

306 b. The intent of the parties that the trust be governed by  
307 chapter 736, or by any predecessor trust code or other trust law  
308 other than this section, is discerned from the trust agreement  
309 or the recorded instrument;

310  
311 without regard to whether the trustee's duties under the trust  
312 agreement are greater than those limited duties listed in s.  
313 689.071(2)(c), and without consideration of any references in  
314 the trust agreement to provisions of chapter 736 made applicable  
315 to the trust by chapter 721, if the trust is a timeshare estate  
316 trust complying with s. 721.08(2)(c)4. or a vacation club trust  
317 complying with s. 721.53(1)(e).

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

323 4. If the determination of whether a trust is a land trust  
324 governed by this section cannot be made under either

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325 subparagraph 1. or subparagraph 2., the determination shall be  
326 made under paragraph (c) as if the trust was created on or after  
327 the effective date of this act.

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

335 (d) If the trust agreement for a land trust created before  
336 the effective date of this act is amended on or after such date  
337 to add to or increase the duties of the trustee beyond the  
338 duties provided in the trust agreement as of the effective date  
339 of this act, the trust shall remain a land trust governed by  
340 this section only if the additional or increased duties of the  
341 trustee implemented by the amendment are greater than those  
342 limited duties described in s. 689.071(2)(c).

343 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section  
344 does not render ineffective any effective Uniform Commercial  
345 Code financing statement filed before July 1, 2014, to perfect a  
346 security interest in a beneficial interest in a land trust that  
347 is determined to be real property as provided in subsection (6),  
348 but such a financing statement ceases to be effective at the  
349 earlier of July 1, 2019, or the time the financing statement  
350 would have ceased to be effective under the law of the  
351 jurisdiction in which it is filed, and the filing of a Uniform  
352 Commercial Code continuation statement after July 1, 2014, does

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353 not continue the effectiveness of such a financing statement.

354 The recording of a mortgage, deed of trust, security agreement,  
355 or other similar security document against such a beneficial  
356 interest that is real property in the public records specified  
357 in subsection (8)(c) continues the effectiveness and priority of  
358 a financing statement filed against such a beneficial interest  
359 before July 1, 2014, if:

360 (a) The recording of the security document in that county  
361 is effective to perfect a lien on such beneficial interest under  
362 subsection (8)(c);

363 (b) The recorded security document identifies a financing  
364 statement filed before July 1, 2014, by indicating the office in  
365 which the financing statement was filed and providing the dates  
366 of filing and the file numbers, if any, of the financing  
367 statement and of the most recent continuation statement filed  
368 with respect to the financing statement; and

369 (c) The recorded security document indicates that such  
370 financing statement filed before July 1, 2014, remains  
371 effective.

372  
373 If no original security document bearing the debtor's signature  
374 is readily available for recording in the public records, a  
375 secured party may proceed under this subsection with such  
376 financing statement filed before July 1, 2014, by recording a  
377 copy of a security document verified by the secured party as  
378 being a true and correct copy of an original authenticated by  
379 the debtor. This subsection does not apply to the perfection of

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380 a security interest in any beneficial interest in a land trust  
381 that is determined to be personal property under subsection (6).

382 (14) ~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and  
383 shall be given a liberal interpretation to effectuate the intent  
384 and purposes hereinabove expressed.

385 (15) ~~(12)~~ EXCLUSION.—This act does not apply to any deed,  
386 mortgage, or other instrument to which s. 689.07 applies.

387 Section 3. Section 736.0102, Florida Statutes, is amended  
388 to read:

389 736.0102 Scope.—

390 (1) Except as otherwise provided in this section, this  
391 code applies to express trusts, charitable or noncharitable, and  
392 trusts created pursuant to a law, judgment, or decree that  
393 requires the trust to be administered in the manner of an  
394 express trust.

395 (2) This code does not apply to constructive or resulting  
396 trusts; conservatorships; custodial arrangements pursuant to the  
397 Florida Uniform Transfers to Minors Act; business trusts  
398 providing for certificates to be issued to beneficiaries; common  
399 trust funds; ~~land trusts under s. 689.071, except to the extent~~  
400 ~~provided in s. 689.071(7);~~ trusts created by the form of the  
401 account or by the deposit agreement at a financial institution;  
402 voting trusts; security arrangements; liquidation trusts; trusts  
403 for the primary purpose of paying debts, dividends, interest,  
404 salaries, wages, profits, pensions, or employee benefits of any  
405 kind; and any arrangement under which a person is nominee or  
406 escrowee for another.

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407       (3) This code does not apply to any land trust under s.  
408       689.071, except to the extent provided in s. 689.071(7), s.  
409       721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its  
410       creation by chapter 736, former chapter 737, or any prior trust  
411       statute superseded or replaced by any provision of former  
412       chapter 737, is not a land trust regardless of any amendment or  
413       modification of the trust, any change in the assets held in the  
414       trust, or any continuing trust resulting from the distribution  
415       or retention in further trust of assets from the trust.

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

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421

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**T I T L E   A M E N D M E N T**

424

Remove lines 3-5 and insert:

425

F.S.; transferring and renumbering portions of s. 689.071, F.S.;

426

providing title estoppel language for vesting full title in

427

trustees; providing

428