

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 229 Land Trusts

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Rodríguez, J.

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee	13 Y, 0 N	Bauer	Cooper
3) Judiciary Committee	16 Y, 0 N, As CS	Ward	Havlicak

SUMMARY ANALYSIS

A land trust is a form of ownership of real property in which a trustee holds legal title to the land and a beneficiary retains the power of direction over the trustee and thus retains the power to direct the trustee to sell or mortgage the real property. A land trust is primarily defined by language in the deed to the trustee which allows third parties to rely upon the ability of the trustee to transfer the property without inquiry into the consent of the beneficiaries. Because of its singular nature, there are laws applicable to other trusts which have no usefulness in the area of land trust law. Further, the standard of practice in this area has not been codified, but rather has been pursued by reference to legal treatises and Illinois law, under which the original land trusts were established. This bill:

- Better defines the difference between a land trust and a general trust, defining a land trust by the largely ministerial duties of the trustee.
- Codifies in the Florida Land Trust Act a number of land trust practices commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.
- Includes improvements based on the experience of Florida land trust practitioners that are intended to facilitate and encourage the use of land trusts in Florida real property transactions.

This bill does not appear to have a fiscal impact on state or local governments.

This bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law recognizes a number of types of trusts. In most instances a trustee is obligated to use a high standard of care in investing and handling assets. There is a duty to account to the beneficiary and the assets of a trust might change. In contrast, the trustee of a land trust has legal title to a single asset for purposes of marketability, makes almost no discretionary decisions, and takes direction from the beneficiary regarding that asset. Thus, there is a distinct body of law that applies to land trusts already established, which this bill seeks to codify and standardize in Florida.

Land trusts were developed first in Illinois, which remains the model for the standard arrangement, in order to create a vehicle for simple transfer of title to property owned by a number of people. As opposed to other types of trusts in Florida, the land trustee is a place-holder for ease of transfer and marketability of title. The trustee of a land trust takes direction from the beneficiaries, and therefore has few if any fiduciary duties, nor any duties to account to the beneficiaries beyond sales transactions. This distinction is significant since Florida also has enacted the Florida Trust Code,¹ which imposes significant duties upon other types of trustees. These duties have no real relevance to the duties of the land trust trustee described in the Florida Land Trust Act.²

Section 689.071, F.S., was enacted in 1963 as the Florida Land Trust Act, to validate the use of Illinois land trusts in Florida and to confirm the marketability of real property titles derived through a land trustee. Accordingly, this statute has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as "deed powers."³ Acting primarily as a "title estoppel"⁴ statute, s. 689.071, F.S., protects third party grantees, mortgagees and lessees who rely on the statutory authority of the trustee based on those recorded deed powers, without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.

Although the words "land trust" appear in the section caption, the operation and effect of the deed powers provisions are not expressly limited to trusts based on the Illinois land trust model. Rather, the title provisions of the statute operate with respect to any recorded instrument, conveying real property to a trustee, where the instrument contains deed powers. As a result, it became a common practice in Florida to include s. 689.071, F.S., deed powers in conveyances to all trustees even if the trust was not intended to be a land trust. This was done in order to obtain the title estoppel benefits of the statute.

Over the years, s. 689.071, F.S., was amended to include other provisions pertaining to land trusts, such as expanding former s. 737.306, F.S., (limitation on personal liability of trustees) to cover land trustees in response to a case holding that those protections were not available to land trustees. In 2006 and 2007, s. 689.071, F.S., was expanded to add rudimentary governance provisions for land trusts and a procedure for appointing successor land trustees, and the expanded section was renamed the "Florida Land Trust Act." The definition of the term "land trust" by reference to inclusion of deed powers in the conveyance deed to the trustee appeared in the statute for the first time in 2007.

¹ Chapter 736, F.S.

² Section 689.071, et seq., F.S.

³ See s. 679.071(3), F.S.

⁴ "Title estoppel" is the representation to a bona fide purchaser by a land trustee that he or she is fully able to transfer the legal title to the subject property, that the transferee is protected from title assaults by the beneficiaries of the trust, that the beneficiaries need not be disclosed, that the trust document need not be disclosed, and other assurances that the purchaser and others may safely deal with the trustee.

Effect of the Bill

A. General Overview

This bill clarifies the distinction between a land trust governed by s. 689.071, F.S., and other express trusts governed by the Florida Trust Code,⁵ yet preserves the title estoppel benefits of the existing statute for any conveyance to a trustee where the conveying instrument contains deed powers. To accomplish this objective, this bill:

- Defines land trusts based on the functional scope of the land trustee's duties, although deed powers would remain an essential element of a Florida land trust; and
- Relocates all the title estoppel provisions of s. 689.071, F.S., to a newly created section⁶ which remains equally applicable to any conveyance to a trustee containing deed powers.⁷

A transitional provision makes the new functional land trust definition apply only to trusts created on or after the effective date of the bill, and a trust existing before the effective date is classified as a land trust based on the intentions of the parties as expressed in or discerned from the existing trust agreement.

The relocated title estoppel provisions in the new section apply to any real property conveyed to a trustee at any time by an instrument containing deed powers, regardless of whether the trust is a land trust or not. By separating the title estoppel statute from the land trust statute in this way, this bill does not change the results intended by the parties to any trust agreement existing on the date that the bill becomes effective.

In addition to transferring the title estoppel provisions to a new section,⁸ the bill also codifies in amended s. 689.071, F.S., a number of land trust practices and principles commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.

B. Point-by-Point Analysis

1. Title Estoppel Provisions - Creation of s. 689.073, F.S.

The marketability of title, and sometimes the anonymity of the beneficial owner, are the primary reasons for a land trust. Anyone who deals with the trustee must be assured that the trustee has legal ownership and full authority to deal with the property, and must also be assured that any claims between the land trustee and the beneficiaries will not affect the transaction or the grantee.

Currently these assurance provisions, called "title estoppel" provisions are set out in ss. 689.071(3), (4), and (5), F.S. The bill relocates the title estoppel provisions to a new section entitled, "Powers conferred on trustee in recorded instrument,"⁹ and creates a new subsection, s. 689.073, F.S.

In moving the provisions to the new statute,¹⁰ changes were made to:

- Remove language regarding the vesting of both "legal and equitable title" in the trustee;
- Remove the reference to real property "in this state;"¹¹
- Relocate to s. 689.073(5), F.S., certain existing criteria for applicability; and

⁵ Chapter 736, F.S.

⁶ Section 689.073, F.S., is created.

⁷ "Deed powers," as used in this analysis refer to the language of s. 689.071(3), F.S, which is, "to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument."

⁸ Section 689.073, F.S.

⁹ Section 1 of the bill relocates and slightly revises ss. 689.071(3), (4) and (5), F.S., moving them to a new s. 689.073, F.S. Subsections (4) and (5) are relocated as-is and renumbered s. 689.073(2) and (3), F.S.

¹⁰ As revised, s. 689.071(3), F.S., becomes s. 689.073(1), F.S.

¹¹ This provision confirms that out-of-state lands may be held in Florida land trust regimes.

- Simplify the remaining language.

The bill continues to vest in a trustee full power and authority to deal with the property as provided in the deed powers granted in the deed. The exclusion for instruments governed by s. 689.07, F.S. [existing s. 689.071(12), F.S.], is relocated to s. 689.073(4), F.S., changing only the words “this act” to “this section.”

Currently, the title estoppel provisions are operative whether or not the conveyance deed refers to the beneficiaries or any unrecorded trust agreement.¹² The bill creates s. 689.073(5), F.S., which:

- Carries forward the provision that conveyance by the trustee is free of claims of beneficiaries;
- Expressly provides that the title estoppel provisions work regardless of the provisions of any unrecorded trust agreement and regardless of whether the trust is a land trust or an express trust; and
- Clarifies that the title estoppel section applies both to deeds recorded after the effective date of the proposed amendments and to deeds recorded under the present statute.¹³

This provision confirms that the relocation of the title estoppel section is not intended to change the legal effect of any previous conveyances under the present statute, and for good measure all such previous conveyances are validated as vesting the trustee with the requisite deed powers.

2. Definition of “Land Trust” - Revisions to s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the new section.¹⁴ The revised definition of “land trust”¹⁵ still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill this definition focuses on the key functional distinction between a land trust and other express trusts: that a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of direction under the trust agreement, whereas a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee’s discretionary duties prudently.

A land trustee has a fiduciary relationship to the land trust beneficiaries and the persons holding the “power of direction” over the actions of the land trustee, just as any agent is bound as a fiduciary to the principal for whom the agent acts.¹⁶ However, in practice, land trustees are rarely delegated duties under a land trust agreement beyond ministerial and administrative matters.¹⁷ This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities. The bill makes clear this practical distinction in the revised definition of a land trust¹⁸ by stating that the trustee has limited duties as set out in the statute.

For trusts created on or after the effective date of the bill, the revised definition will limit the duties of a trustee of a “land trust” to the following:

- The duty to exercise the trustee’s deed powers as directed by the beneficiary or by the holder of the power of direction (i.e., this is the agent’s fiduciary duty: to follow the principal’s directions);
- The duty to dispose of the trust property at the termination of the trust (i.e., the classic “active” duty that historically saved Illinois land trusts from the statute of uses);
- The duty to perform ministerial and administrative functions delegated to the trustee; and

¹² Section 689.071(3), F.S.

¹³ *Id.*

¹⁴ Section 689.073, F.S.

¹⁵ Section 689.071(2)(c), F.S.

¹⁶ *Raborn v. Menotte*, 974 So.2d 328 (Fla. 2008).

¹⁷ “The trustee is a mere vessel of title.” *Brigham v. Brigham*, 11 So.3d 374 (Fla. 3d DCA 2009).

¹⁸ Section 689.071(2)(c), F.S.

- The duties required of certain timeshare trustees by ch. 721, F.S.¹⁹

If the trustee's duties exceed the foregoing limited duties and the trust is created after the effective date of the proposed amendment, then the trust will not be treated as a land trust and will not be excluded from the operation of ch. 736, F.S.²⁰

Because the title estoppel provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a "land trust" will have no effect on the title to any real property held by the trustee.

3. Other Definitions - Revisions to s. 689.071(2), F.S.

Besides revising the definition of "land trust," section 2 of the bill adds and clarifies some other definitions of lesser significance in s. 689.071(2), F.S.:

- The definition for "holder of the power of direction" is revised and shortened to "power of direction" because "holder of" is not used consistently in the statute;
- The phrase "person or entity" is shortened to "person" in numerous places (beginning with the definition of "beneficiary") because the statutory definition of "person" includes entities;
- New definitions are created for some basic trust concepts, such as "trust agreement," "trust property" and "recorded instrument" (the latter being a cross-reference to the relocated deed powers provision now found in s. 689.073(1), F.S.); and
- "Trustee" is redefined so that the term will work in the "switchbox"²¹ provision to mean the trustee of a land trust or the trustee of another trust. For this reason, numerous references to "trustee" in revised s. 689.071, F.S., will be changed to "trustee of a land trust" where that meaning is intended.

4. Vesting of "Legal and Equitable Title" Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This vesting of "legal and equitable title" provision is a land trust characteristic imported from Illinois, and therefore it does not appear in the relocated title estoppel provisions in s. 689.073, F.S., that universally apply to any type of trust with deed powers. Although the "legal and equitable" language has been excised from a number of other subsections of s. 689.071, F.S., to avoid potential circularity, s. 689.071(3), F.S., will continue to contain the operative language regarding vesting of legal and equitable title in the land trustee.

The bill makes technical revisions to s. 689.071(3), F.S.:

- Because new s. 689.073, F.S., now defines the requirements for a "recorded instrument" containing deed powers, the bill does not repeat this in the new s. 689.071(3), F.S.;
- The statement that the recorded instrument does not by itself create an entity has been relocated to the end of s. 689.071(3), F.S., instead of appearing in the definition of "land trust."
- Other housekeeping edits to s. 689.071(3), F.S., concern the consistent use of defined terms such as "land trust," "trust agreement" and "trust property."

¹⁹ Section 721.08, F.S., provides that time share accommodations may be placed into a trust. This will be addressed in detail below, in regard to the effect of this statute.

²⁰ Chapter 736, F.S., is the Florida Trust Code and applies to express trusts.

²¹ This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. This is explained in more detail on page 8 of this analysis.

5. Statute of Uses and Doctrine of Merger - Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in s. 689.09, F.S. The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary. Former s. 689.071(5), F.S., is one of the title estoppel provisions relocated verbatim to s. 689.073, F.S.

6. Personal Property Option-- Revisions to s. 689.071(6), F.S.

Currently, section 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law.²² The bill provides that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property.

Subsection 689.071(6), F.S., is changed in one regard: the optional personal property declaration may be made in the recorded instrument or in the trust agreement. This change is consistent with the relocation of the title estoppel provisions to new s. 689.073, F.S., which governs title matters that depend on the contents of the recorded instrument. Whether the beneficial interests are real property or personal property does not affect the nature of the title vested in the trustee or the ability of third parties to acquire good title to the trust property from the trustee in accordance with the powers contained in the recorded instrument.

As noted above, revised s. 689.071(6), F.S., contains edits for the consistent usage of defined terms such as “land trust” and “trust agreement.”

7. Beneficiary Provisions-- Revisions to s. 689.071(8), F.S.

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities, particularly *Kenoe on Land Trusts*.²³ The bill revises 689.071(8), F.S., in a number of respects to codify these land trust practices.

Revised s. 689.071(8)(a), F.S., is a non-substantive combination of former paragraphs (a), (b) and (d), intended to consolidate similar provisions and make paragraph numbers (b) and (d) available for other new provisions. The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the Kenoe treatise. The purpose of including these provisions directly in the Land Trust Act is to increase practitioner awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.

The bill revises s. 689.071(8)(c), F.S., to reconcile the Land Trust Act with the U.C.C. Article 9 exclusion of interests in real property.²⁴ Case law²⁵ holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that U.C.C. Article 9 governs the perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Land Trust Act (which says Article 9 applies to beneficial interests) and the U.C.C. (which says Article 9 excludes real property interests).

²² Except of course for the stamp tax provision in s. 201.02(4), F.S.

²³ The author, Henry W. Kenoe, wrote a number of treatises on land trusts which are now out of print.

²⁴ These provisions are found in s. 679.1091(4)(k), F.S.

²⁵ *In re Cowser*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

Currently, ch. 721, F.S. (the Florida Vacation Plan and Timeshare Act), authorizes the creation and marketing of timeshare estates through trusts.²⁶ Because timeshare estates are defined as real property,²⁷ the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust, a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.²⁸

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the U.C.C. governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowser*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. In the latter case, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule²⁹ to provide for the continuation of perfection for any U.C.C. financing statement that may have been filed before the effective date of this clarification. It is an abbreviated version of the transition rules that were included in Revised U.C.C. Article 9 in 2001.

The bill revises the existing last sentence of s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. New s. 689.071(8)(d), F.S., makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S: the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

Sections 689.071(8)(f) and (g), F.S., as well as other parts of s. 689.071(8), F.S., have been edited for consistent usage of the defined terms "land trust," "recorded instrument," "trust agreement," and "trust property."

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property. Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without incurring the additional expense of a guardian ad litem.

8. Successor Trustee Provisions-- Revisions to s. 689.071(9), F.S.

Most of the revisions to s. 689.071(9), F.S., are non-substantive edits for consistent usage of defined terms and modernization of language (e.g., replacing "office of the recorder of deeds" with "public records"). The bill deletes s. 689.071(9)(a), F.S., because the "switchbox" provision in subsection 689.071(12), F.S., globally addresses the inapplicability of chapter 736, F.S., to land trusts.

The current text of s. 689.071(9), F.S., uses the expression "each successor trustee" to avoid the longer phrase "the successor trustee or trustees." Unfortunately, it is possible to misread the shorter phrase to mean "each and every successor trustee" in a series of successors.³⁰ The longer expression is clearer and replaces the shorter one.

²⁶ See s. 721.08(2)(c)4, F.S.

²⁷ See s. 721.05(34), F.S.

²⁸ The conflict exists between UCC Article 9 and the Land Trust Act.

²⁹ See the newly created s. 689.071(13), F.S.

³⁰ E.g., existing paragraph s. 689.071(9)(c), F.S., requires that "each successor trustee shall file a declaration of appointment."

Currently, s. 689.071(9)(f), F.S., provides that the beneficiaries may direct the land trustee to convey the trust property to another trustee. The bill changes this paragraph to provide that this direction to convey could also come from the person holding the power of direction.

9. Trustee as Creditor-- Revisions to s. 689.071(10), F.S.

The bill revises s. 689.071(10)(a), F.S., to include a conforming reference to a mortgage (as well as a security interest) against a beneficial interest in a land trust. Other non-substantive edits include consistent usage of defined terms and the deletion of "or entity" after "person."

10. Notices to Trustee Provisions-- Revisions to s. 689.071(11), F.S.

The bill adds a new subsection to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

11. "Switchbox" Provision; Timeshare Trusts-- Revisions to s. 689.071(12), F.S.

The revised "land trust" definition discussed above contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S., sometimes referred to below as the "switchbox" provision. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based "land trust" definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switchbox provision does not apply the duties-based test to any existing land trust agreement that says the trust is a "land trust" or clearly was intended to be a land trust. In this way, existing obvious land trusts are "grandfathered" into the land trust statute.

There are two necessary exceptions to the switchbox provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes³¹ authorize the use of trusts for the creation and marketing of timeshare estates; and specify similar requirements for using trusts for multi-site vacation clubs.³² These statutes specify that certain provisions of the Florida Trust Code govern the liability of the trustees of such qualifying trusts,³³ and these provisions are usually recited in the ch. 721, F.S., trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust³⁴ but would also refer to governance by these specific provisions of ch. 736, F.S.

Accordingly, the "switchbox" provision³⁵ expressly ignores these references to ch. 736, F.S., in the trust agreement of a trust qualifying as a timeshare estate trust³⁶ or a vacation club trust.³⁷

³¹ Chapter 721, F.S.

³² Section 721.53(1)(e), F.S.

³³ See specifically, ss. 736.08125, 736.08163, 736.1013 and 736.1015, F.S.

³⁴ See s. 689.071(14)(b)1, F.S.

³⁵ See s. 689.071(12)(b), F.S.

³⁶ See s. 721.08(2)(c)4, F.S.

³⁷ See s. 721.53(1)(e), F.S.

Similar considerations under ch. 721, F.S., led to the inclusion in the revised s. 689.071(2)(c), F.S., a list of limited duties for land trustees. Most of the recited ch. 736, F.S., provisions that apply to timeshare trusts³⁸ pertain to limitations on the liability of the trustee, but one of them³⁹ also imposes duties on a trustee. In addition, ch. 721, F.S., also directly imposes certain duties on the trustee of a timeshare estate trust or a vacation club trust, although arguably those duties fall into the ministerial and administrative category. Further, it is conceivable that ch. 721, F.S., might be amended in the future to impose other duties on timeshare trustees. To preserve the utility of land trusts as a structure for organizing timeshare estate trusts and vacation club trusts qualifying under ch. 721, F.S., revised s. 689.071(2)(c), F.S., simply includes in the list of limited land trustee duties any duties that are imposed on the trustee under ch. 721, F.S.

12. Florida Trust Code - Scope Provision-- Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two logical subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. New s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in subsection 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

The bill adds s. 736.0102(3), F.S., to provide that a Trust Code trust remains a Trust Code trust (and does not become a land trust) regardless of any amendment or change in asset composition or utilization of a sub trust.

B. SECTION DIRECTORY:

Section 1 creates s. 689.073, F.S., from portions of s. 689.071, F.S., regarding powers conferred on the trustee of a land trust.

Section 2 amends s. 689.071, F.S., regarding land trusts, definitions and law.

Section 3 amends s. 736.0102, F.S., relating to scope of trust code.

Section 4 is a direction regarding the effective date.

Section 5 provides that this bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

³⁸ See ch. 721, F.S.

³⁹ See s. 736.08163, F.S., concerning environmental matters.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made grammatical and stylistic changes without changing the meaning of the bill. The amendment also amended effective dates for any needed transition from recorded instruments that identify a security interest in a land trust as a personal interest under the Uniform Commercial Code to a mortgage.

On March 20, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrects a statutory reference in Section 1. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.