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1 A bill to be entitled
2 An act relating to land trusts; creating s. 689.073,
3 F.S.; revising provisions relating to vesting of
4 ownership in a trustee; revising rights, liabilities,
5 and duties of land trust beneficiaries; providing
6 exclusion and applicability; amending s. 689.071,
7 F.S.; revising and providing definitions; revising
8 provisions relating to land trust transfers of real
9 property and vesting of ownership in a trustee;
10 prohibiting the operation of the statute of uses to
11 execute a land trust or to vest the trust property
12 under certain conditions; prohibiting the operation of
13 the doctrine of merger to execute a land trust or to
14 vest the trust property under certain conditions;
15 providing conditions under which a beneficial interest
16 is deemed real property; revising and providing
17 rights, liabilities, and duties of land trust
18 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;
 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,

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57 | or other entity duly formed under the laws of its state of
58 | qualification, which recorded instrument designates the person,
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)~~ BENEFCIARY CLAIMS.—All persons dealing with the
 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

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113 effective provisions of 689.071(3) is valid and has the effect
114 of vesting full power and authority in such trustee as provided
115 in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended
117 by 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
 146 the holder of the power of direction;

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

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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
173 governing a land trust or other trust, including any amendments.

174 (g) "Trust property" means any interest in real property,
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
179 a recorded instrument or trust agreement ~~trust instrument~~ to
180 hold legal and equitable title to the trust property of a land
181 trust ~~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 trustee of a land trust and conferring upon the trustee
187 the power and authority prescribed in s. 689.073(1), ~~in this~~
188 state, including, but not limited to, a leasehold or mortgagee
189 interest, to any person or any corporation, bank, trust company,
190 or other entity duly formed under the laws of its state of
191 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
 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
 216 | merger does not extinguish a land trust or vest the trust
 217 | property in the beneficiary or beneficiaries of the land trust,
 218 | regardless of whether the trustee is the sole beneficiary of the
 219 | land 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
 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
 248 | interest in a particular portion or parcel of the trust property
 249 | of a 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
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), to perfect a lien or security interest against
267 that beneficial interest, the mortgage, deed of trust, security
268 agreement, or other similar security document must be recorded
269 in the public records of the county that is specified for such
270 security documents in the recorded instrument or in a
271 declaration of trust or memorandum for such security document
272 recorded in the public records of the same county as the
273 recorded instrument. If no county is 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

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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
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.

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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
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,
331 and any use relating to the trust property ~~real estate~~ may not
332 be defeated, because beneficiaries are not specified by name in
333 the recorded instrument ~~deed of conveyance~~ to the trustee or
334 because duties are not imposed upon the trustee. The power
335 conferred by any recorded instrument ~~deed of conveyance~~ on a
336 trustee of a land trust to sell, lease, encumber, or otherwise

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337 dispose of property described in the recorded instrument ~~deed~~ is
338 effective, and a person dealing with the trustee of a land trust
339 is not required to inquire any further into the right of the
340 trustee to 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.

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
 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, 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

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

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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
436 mortgage against ~~in~~ a beneficial interest in a land trust or by
437 a mortgage on ~~land~~ trust property of a land trust, the validity
438 or enforceability of the debt, security interest, or mortgage
439 and the rights, remedies, powers, and duties of the creditor
440 with respect to the debt or the security are not affected by the
441 fact that the creditor and the trustee are the same person ~~or~~
442 ~~entity~~, 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

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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
454 to a trustee of a land trust regarding trust property by a
455 person who is not a party to the trust agreement must identify
456 the trust property to which the notice pertains or include the
457 name and date of the land trust to which the notice pertains, if
458 such information is shown on the recorded instrument for such
459 trust 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
464 if there is no recorded instrument that confers on the trustee
465 the power and authority prescribed in s 689.073(1).

466 (b) For a trust created before July 1, 2013:

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

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

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

475
476 without regard to whether the trustee's duties under the trust

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477 agreement are greater than those limited duties described in s.
478 689.071(2)(c).

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

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

484 b. The intent of the parties that the trust be governed by
485 chapter 736, or by any predecessor trust code or other law, is
486 discerned from the trust agreement or the recorded instrument;

487
488 without regard to whether the trustee's duties under the trust
489 agreement exceed those limited duties listed in s.

490 689.071(2)(c), and without consideration of any references in
491 the trust agreement to provisions of chapter 736 made applicable
492 to the trust by chapter 721, if the trust is a timeshare estate
493 trust complying with s. 721.08(2)(c)4. or a vacation club trust
494 complying with s. 721.53(1)(e).

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

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

505 (c) If a recorded instrument confers on the trustee the
506 power and authority described in s. 689.073(1) and the trust was
507 created on or after the effective date of this act, the trust
508 shall be determined to be a land trust governed by this section
509 only if the trustee's duties under the trust agreement,
510 including any amendment made on or after such date, are no
511 greater than those limited duties described in s. 689.071(2)(c).

512 (d) If the trust agreement for a land trust created before
513 the effective date of this act is amended on or after such date
514 to add to or increase the duties of the trustee beyond the
515 duties provided in the trust agreement as of the effective date
516 of this act, the trust shall remain a land trust governed by
517 this section only if the additional or increased duties of the
518 trustee implemented by the amendment are no greater than those
519 limited duties described in s. 689.071(2)(c).

520 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
521 does not render ineffective any effective Uniform Commercial
522 Code financing statement filed before the effective date of this
523 act to perfect a security interest in a beneficial interest in a
524 land trust that is determined to be real property as provided in
525 subsection (6), but such a financing statement ceases to be
526 effective at the earlier of 5 years after the effective date of
527 this act or the time the financing statement would have ceased
528 to be effective under the law of the jurisdiction in which it is
529 filed, and the filing of a Uniform Commercial Code continuation
530 statement after the effective date of this act does not continue
531 the effectiveness of such a financing statement. The recording
532 of a mortgage, deed of trust, security agreement, or other

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533 similar security document against such a beneficial interest
534 that is real property in the public records specified in
535 subsection (8)(c) continues the effectiveness and priority of a
536 financing statement filed against such a beneficial interest
537 before the effective date of this act if:

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

541 (b) The recorded security document identifies a financing
542 statement filed before the effective date of this act by
543 indicating the office in which the financing statement was filed
544 and providing the dates of filing and the file numbers, if any,
545 of the financing statement and of the most recent continuation
546 statement filed with respect to the financing statement; and

547 (c) The recorded security document indicates that such
548 financing statement filed before the effective date of this act
549 remains effective.

550
551 If no original security document bearing the debtor's signature
552 is readily available for recording in the public records, a
553 secured party may proceed under this subsection with such
554 financing statement filed before the effective date of this act
555 by recording a copy of a security document verified by the
556 secured party as being a true and correct copy of an original
557 authenticated by the debtor. This subsection does not apply to
558 the perfection of a security interest in any beneficial interest
559 in a land trust that is determined to be personal property under
560 subsection (6).

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561 ~~(14)-(11)~~ REMEDIAL ACT.—This act is remedial in nature and
562 shall be given a liberal interpretation to effectuate the intent
563 and purposes hereinabove expressed.

564 ~~(15)-(12)~~ EXCLUSION.—This act does not apply to any deed,
565 mortgage, or other instrument to which s. 689.07 applies.

566
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
571 code 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
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.

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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 phrases "the effective date of this act"
598 and "5 years after the effective date of this act" wherever they
599 occur in this act with such dates.

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