

**By** the Committees on Banking and Insurance; and Judiciary; and  
Senator Hukill

597-02819-13

2013492c2

1                                   A bill to be entitled  
2           An act relating to estates; amending s. 198.13, F.S.;  
3           providing for retroactive application; deleting a  
4           provision that provides that certain information  
5           relating to a state death tax credit or a generation-  
6           skipping transfer credit is not applicable to estates  
7           of decedents dying after a specific date; amending s.  
8           717.101, F.S.; providing a definition; amending s.  
9           717.112, F.S.; providing an exception to property held  
10          by agents and fiduciaries; creating s. 717.1125, F.S.;  
11          providing that property held by fiduciaries under  
12          trust instruments is presumed unclaimed under certain  
13          circumstances; amending s. 731.110, F.S.; specifying  
14          that a certain subsection does not require a caveator  
15          to be served with formal notice of its own petition  
16          for administration; amending s. 732.703, F.S.;  
17          revising language regarding instruments governed by  
18          the laws of a different state; creating s. 732.806,  
19          F.S.; providing provisions relating to gifts to  
20          lawyers and other disqualified persons; amending s.  
21          732.901, F.S.; requiring the custodian of a will to  
22          supply the testator's date of death or the last four  
23          digits of the testator's social security number upon  
24          deposit; providing that an original will submitted  
25          with a pleading is considered to be deposited with the  
26          clerk; requiring the clerk to retain and preserve the  
27          original will in its original form for a certain  
28          period of time; amending s. 736.0103, F.S.; providing  
29          definitions; amending s. 736.0202, F.S.; providing for

597-02819-13

2013492c2

30 in rem jurisdiction and personal jurisdiction over a  
31 trustee, beneficiary, or other person; deleting a  
32 provision referring to other methods of obtaining  
33 jurisdiction; creating s. 736.02025, F.S.; providing  
34 provisions for methods of service of process in  
35 actions involving trusts and trust beneficiaries;  
36 repealing s. 736.0205, F.S., relating to trust  
37 proceedings and the dismissal of matters relating to  
38 foreign trusts; repealing s. 736.0807(4), F.S.,  
39 relating to delegation of powers by a trustee;  
40 amending s. 736.0813, F.S.; clarifying the duties of a  
41 trustee to provide a trust accounting; amending ss.  
42 607.0802, 731.201, 733.212, 736.0802, 736.08125, and  
43 738.104, F.S.; conforming cross-references; providing  
44 an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Retroactive to January 1, 2013, subsection (4)  
49 of section 198.13, Florida Statutes, is amended to read:

50 198.13 Tax return to be made in certain cases; certificate  
51 of nonliability.—

52 (4) Notwithstanding any other provisions of this section  
53 and applicable to the estate of a decedent who dies after  
54 December 31, 2004, if, upon the death of the decedent, a state  
55 death tax credit or a generation-skipping transfer credit is not  
56 allowable pursuant to the Internal Revenue Code of 1986, as  
57 amended:

58 (a) The personal representative of the estate is not

597-02819-13

2013492c2

59 required to file a return under subsection (1) in connection  
60 with the estate.

61 (b) The person who would otherwise be required to file a  
62 return reporting a generation-skipping transfer under subsection  
63 (3) is not required to file such a return in connection with the  
64 estate.

65  
66 ~~The provisions of this subsection do not apply to estates of~~  
67 ~~decedents dying after December 31, 2012.~~

68 Section 2. Present subsections (22) and (23) of section  
69 717.101, Florida Statutes, are redesignated as subsections (23)  
70 and (24), respectively, and a new subsection (22) is added to  
71 that section, to read:

72 717.101 Definitions.—As used in this chapter, unless the  
73 context otherwise requires:

74 (22) "Trust instrument" means a trust instrument as defined  
75 in s. 736.0103.

76 Section 3. Subsection (1) of section 717.112, Florida  
77 Statutes, is amended to read:

78 717.112 Property held by agents and fiduciaries.—

79 (1) Except as provided in ss. 717.1125 and 733.816, all  
80 intangible property and any income or increment thereon held in  
81 a fiduciary capacity for the benefit of another person is  
82 presumed unclaimed unless the owner has within 5 years after it  
83 has become payable or distributable increased or decreased the  
84 principal, accepted payment of principal or income, communicated  
85 concerning the property, or otherwise indicated an interest as  
86 evidenced by a memorandum or other record on file with the  
87 fiduciary.

597-02819-13

2013492c2

88 Section 4. Section 717.1125, Florida Statutes, is created  
89 to read:

90 717.1125 Property held by fiduciaries under trust  
91 instruments.—All intangible property and any income or increment  
92 thereon held in a fiduciary capacity for the benefit of another  
93 person under a trust instrument is presumed unclaimed unless the  
94 owner has, within 2 years after it has become payable or  
95 distributable, increased or decreased the principal, accepted  
96 payment of principal or income, communicated concerning the  
97 property, or otherwise indicated an interest as evidenced by a  
98 memorandum or other record on file with the fiduciary.

99 Section 5. Subsection (3) of section 731.110, Florida  
100 Statutes, is amended to read:

101 731.110 Caveat; proceedings.—

102 (3) If a caveat has been filed by an interested person  
103 other than a creditor, the court may not admit a will of the  
104 decedent to probate or appoint a personal representative until  
105 formal notice of the petition for administration has been served  
106 on the caveator or the caveator's designated agent and the  
107 caveator has had the opportunity to participate in proceedings  
108 on the petition, as provided by the Florida Probate Rules. This  
109 subsection does not require a caveator to be served with formal  
110 notice of its own petition for administration.

111 Section 6. Subsection (4) of section 732.703, Florida  
112 Statutes, is amended to read:

113 732.703 Effect of divorce, dissolution, or invalidity of  
114 marriage on disposition of certain assets at death.—

115 (4) Subsection (2) does not apply:

116 (a) To the extent that controlling federal law provides

597-02819-13

2013492c2

117 otherwise;

118 (b) If the governing instrument is signed by the decedent,  
119 or on behalf of the decedent, after the order of dissolution or  
120 order declaring the marriage invalid and such governing  
121 instrument expressly provides that benefits will be payable to  
122 the decedent's former spouse;

123 (c) To the extent a will or trust governs the disposition  
124 of the assets and s. 732.507(2) or s. 736.1105 ~~736.1005~~ applies;

125 (d) If the order of dissolution or order declaring the  
126 marriage invalid requires that the decedent acquire or maintain  
127 the asset for the benefit of a former spouse or children of the  
128 marriage, payable upon the death of the decedent either outright  
129 or in trust, only if other assets of the decedent fulfilling  
130 such a requirement for the benefit of the former spouse or  
131 children of the marriage do not exist upon the death of the  
132 decedent;

133 (e) If, under the terms of the order of dissolution or  
134 order declaring the marriage invalid, the decedent could not  
135 have unilaterally terminated or modified the ownership of the  
136 asset, or its disposition upon the death of the decedent;

137 (f) If the designation of the decedent's former spouse as a  
138 beneficiary is irrevocable under applicable law;

139 (g) If the governing instrument ~~directing the disposition~~  
140 ~~of the asset at death~~ is governed by the laws of a state other  
141 than this state;

142 (h) To an asset held in two or more names as to which the  
143 death of one coowner vests ownership of the asset in the  
144 surviving coowner or coowners;

145 (i) If the decedent remarries the person whose interest

597-02819-13

2013492c2

146 would otherwise have been revoked under this section and the  
147 decedent and that person are married to one another at the time  
148 of the decedent's death; or

149 (j) To state-administered retirement plans under chapter  
150 121.

151 Section 7. Section 732.806, Florida Statutes, is created to  
152 read:

153 732.806 Gifts to lawyers and other disqualified persons.-

154 (1) Any part of a written instrument which makes a gift to  
155 a lawyer or a person related to the lawyer is void if the lawyer  
156 prepared or supervised the execution of the written instrument,  
157 or solicited the gift, unless the lawyer or other recipient of  
158 the gift is related to the person making the gift.

159 (2) This section is not applicable to a provision in a  
160 written instrument appointing a lawyer, or a person related to  
161 the lawyer, as a fiduciary.

162 (3) A provision in a written instrument purporting to waive  
163 the application of this section is unenforceable.

164 (4) If property distributed in kind, or a security interest  
165 in that property, is acquired by a purchaser or lender for value  
166 from a person who has received a gift in violation of this  
167 section, the purchaser or lender takes title free of any claims  
168 arising under this section and incurs no personal liability by  
169 reason of this section, whether or not the gift is void under  
170 this section.

171 (5) In all actions brought under this section, the court  
172 must award taxable costs as in chancery actions, including  
173 attorney fees. When awarding taxable costs and attorney fees  
174 under this section, the court may direct payment from a party's

597-02819-13

2013492c2

175 interest in the estate or trust, or enter a judgment that may be  
176 satisfied from other property of the party, or both. Attorney  
177 fees and costs may not be awarded against a party who, in good  
178 faith, initiates an action under this section to declare a gift  
179 void.

180 (6) If a part of a written instrument is invalid by reason  
181 of this section, the invalid part is severable and may not  
182 affect any other part of the written instrument which can be  
183 given effect, including a term that makes an alternate or  
184 substitute gift. In the case of a power of appointment, this  
185 section does not affect the power to appoint in favor of persons  
186 other than the lawyer or a person related to the lawyer.

187 (7) For purposes of this section:

188 (a) A lawyer is deemed to have prepared, or supervised the  
189 execution of, a written instrument if the preparation, or  
190 supervision of the execution, of the written instrument was  
191 performed by an employee or lawyer employed by the same firm as  
192 the lawyer.

193 (b) A person is "related" to an individual if, at the time  
194 the lawyer prepared or supervised the execution of the written  
195 instrument or solicited the gift, the person is:

- 196 1. A spouse of the individual;
- 197 2. A lineal ascendant or descendant of the individual;
- 198 3. A sibling of the individual;
- 199 4. A relative of the individual or of the individual's  
200 spouse with whom the lawyer maintains a close, familial  
201 relationship;
- 202 5. A spouse of a person described in subparagraph 2.,  
203 subparagraph 3., or subparagraph 4.; or

597-02819-13

2013492c2

204 6. A person who cohabitates with the individual.

205 (c) The term "written instrument" includes, but is not  
206 limited to, a will, a trust, a deed, a document exercising a  
207 power of appointment, or a beneficiary designation under a life  
208 insurance contract or any other contractual arrangement that  
209 creates an ownership interest or permits the naming of a  
210 beneficiary.

211 (d) The term "gift" includes an inter vivos gift, a  
212 testamentary transfer of real or personal property or any  
213 interest therein, and the power to make such a transfer  
214 regardless of whether the gift is outright or in trust;  
215 regardless of when the transfer is to take effect; and  
216 regardless of whether the power is held in a fiduciary or  
217 nonfiduciary capacity.

218 (8) The rights and remedies granted in this section are in  
219 addition to any other rights or remedies a person may have at  
220 law or in equity.

221 Section 8. Section 732.901, Florida Statutes, is amended to  
222 read:

223 732.901 Production of wills.—

224 (1) The custodian of a will must deposit the will with the  
225 clerk of the court having venue of the estate of the decedent  
226 within 10 days after receiving information that the testator is  
227 dead. The custodian must supply the testator's date of death or  
228 the last four digits of the testator's social security number to  
229 the clerk upon deposit.

230 (2) Upon petition and notice, the custodian of any will may  
231 be compelled to produce and deposit the will ~~as provided in~~  
232 ~~subsection (1).~~ All costs, damages, and a reasonable attorney's



597-02819-13

2013492c2

233 fee shall be adjudged to petitioner against the delinquent  
234 custodian if the court finds that the custodian had no just or  
235 reasonable cause for failing to deposit the will.

236 (3) An original will submitted to the clerk with a petition  
237 or other pleading is deemed to have been deposited with the  
238 clerk.

239 (4) Upon receipt, the clerk shall retain and preserve the  
240 original will in its original form for at least 20 years. If the  
241 probate of a will is initiated, the original will may be  
242 maintained by the clerk with the other pleadings during the  
243 pendency of the proceedings, but the will must at all times be  
244 retained in its original form for the remainder of the 20-year  
245 period whether or not the will is admitted to probate or the  
246 proceedings are terminated. Transforming and storing a will on  
247 film, microfilm, magnetic, electronic, optical, or other  
248 substitute media or recording a will onto an electronic record-  
249 keeping system, whether or not in accordance with the standards  
250 adopted by the Supreme Court of Florida, or permanently  
251 recording a will does not eliminate the requirement to preserve  
252 the original will.

253 (5) For purposes of this section, the term "will" includes  
254 a separate writing as described in s. 732.515.

255 Section 9. Present subsections (6) through (11) of section  
256 736.0103, Florida Statutes, are redesignated as subsections (7)  
257 through (12), respectively, present subsections (12) through  
258 (21) of that section are redesignated as subsections (14)  
259 through (23), respectively, and new subsections (6) and (13) are  
260 added to that section, to read:

261 736.0103 Definitions.—Unless the context otherwise

597-02819-13

2013492c2

262 requires, in this code:

263 (6) "Distributee" means a beneficiary who is currently  
264 entitled to receive a distribution.

265 (13) "Permissible distributee" means a beneficiary who is  
266 currently eligible to receive a distribution.

267 Section 10. Section 736.0202, Florida Statutes, is amended  
268 to read:

269 736.0202 Jurisdiction over trustee and beneficiary.—

270 (1) IN REM JURISDICTION.—Any beneficiary ~~By accepting the~~  
271 ~~trusteeship~~ of a trust having its principal place of  
272 administration in this state is subject ~~or by moving the~~  
273 ~~principal place of administration to this state, the trustee~~  
274 ~~submits personally~~ to the jurisdiction of the courts of this  
275 state to the extent of the beneficiary's interest in regarding  
276 ~~any matter involving~~ the trust.

277 (2) PERSONAL JURISDICTION.—

278 (a) Any trustee, trust beneficiary, or other person,  
279 whether or not a citizen or resident of this state, who  
280 personally or through an agent does any of the following acts  
281 related to a trust, submits to the jurisdiction of the courts of  
282 this state involving that trust: ~~With respect to their interests~~  
283 ~~in the trust, the beneficiaries of a trust having its principal~~  
284 ~~place of administration in this state are subject to the~~  
285 ~~jurisdiction of the courts of this state regarding any matter~~  
286 ~~involving the trust. By accepting a distribution from such a~~  
287 ~~trust, the recipient submits personally to the jurisdiction of~~  
288 ~~the courts of this state regarding any matter involving the~~  
289 ~~distribution.~~

290 1. Accepts trusteeship of a trust having its principal

597-02819-13

2013492c2

291 place of administration in this state at the time of acceptance.

292 2. Moves the principal place of administration of a trust  
293 to this state.

294 3. Serves as trustee of a trust created by a settlor who  
295 was a resident of this state at the time of creation of the  
296 trust or serves as trustee of a trust having its principal place  
297 of administration in this state.

298 4. Accepts or exercises a delegation of powers or duties  
299 from the trustee of a trust having its principal place of  
300 administration in this state.

301 5. Commits a breach of trust in this state, or commits a  
302 breach of trust with respect to a trust having its principal  
303 place of administration in this state at the time of the breach.

304 6. Accepts compensation from a trust having its principal  
305 place of administration in this state.

306 7. Performs any act or service for a trust having its  
307 principal place of administration in this state.

308 8. Accepts a distribution from a trust having its principal  
309 place of administration in this state with respect to any matter  
310 involving the distribution.

311 (b) A court of this state may exercise personal  
312 jurisdiction over a trustee, trust beneficiary, or other person,  
313 whether found within or outside the state, to the maximum extent  
314 permitted by the State Constitution or the Federal Constitution.

315 ~~(3) This section does not preclude other methods of~~  
316 ~~obtaining jurisdiction over a trustee, beneficiary, or other~~  
317 ~~person receiving property from the trust.~~

318 Section 11. Section 736.02025, Florida Statutes, is created  
319 to read:

597-02819-13

2013492c2

320 736.02025 Service of process.-

321 (1) Except as otherwise provided in this section, service  
322 of process upon any person may be made as provided in chapter  
323 48.

324 (2) Where only in rem or quasi in rem relief is sought  
325 against a person in a matter involving a trust, service of  
326 process on that person may be made by sending a copy of the  
327 summons and complaint by any commercial delivery service  
328 requiring a signed receipt or by any form of mail requiring a  
329 signed receipt. Service under this subsection shall be complete  
330 upon signing of a receipt by the addressee or by any person  
331 authorized to receive service of a summons on behalf of the  
332 addressee as provided in chapter 48. Proof of service shall be  
333 by verified statement of the person serving the summons, to  
334 which must be attached the signed receipt or other evidence  
335 satisfactory to the court that delivery was made to the  
336 addressee or other authorized person.

337 (3) Under any of the following circumstances, service of  
338 original process pursuant to subsection (2) may be made by  
339 first-class mail:

340 (a) If registered or certified mail service to the  
341 addressee is unavailable and if delivery by commercial delivery  
342 service is also unavailable.

343 (b) If delivery is attempted and is refused by the  
344 addressee.

345 (c) If delivery by mail requiring a signed receipt is  
346 unclaimed after notice to the addressee by the delivering  
347 entity.

348 (4) If service of process is obtained under subsection (3),

597-02819-13

2013492c2

349 proof of service shall be made by verified statement of the  
350 person serving the summons. The verified statement must state  
351 the basis for service by first-class mail, the date of mailing,  
352 and the address to which the mail was sent.

353 Section 12. Section 736.0205, Florida Statutes, is  
354 repealed.

355 Section 13. Subsection (4) of section 736.0807, Florida  
356 Statutes, is repealed.

357 Section 14. Paragraph (d) of subsection (1) of section  
358 736.0813, Florida Statutes, is amended to read:

359 736.0813 Duty to inform and account.—The trustee shall keep  
360 the qualified beneficiaries of the trust reasonably informed of  
361 the trust and its administration.

362 (1) The trustee's duty to inform and account includes, but  
363 is not limited to, the following:

364 (d) A trustee of an irrevocable trust shall provide a trust  
365 accounting, as set forth in s. 736.08135, from the date of the  
366 last accounting or, if none, from the date on which the trustee  
367 became accountable, to each qualified beneficiary at least  
368 annually and on termination of the trust or on change of the  
369 trustee.

370

371 Paragraphs (a) and (b) do not apply to an irrevocable trust  
372 created before the effective date of this code, or to a  
373 revocable trust that becomes irrevocable before the effective  
374 date of this code. Paragraph (a) does not apply to a trustee who  
375 accepts a trusteeship before the effective date of this code.

376 Section 15. Subsection (2) of section 607.0802, Florida  
377 Statutes, is amended to read:

597-02819-13

2013492c2

378 607.0802 Qualifications of directors.—

379 (2) In the event that the eligibility to serve as a member  
380 of the board of directors of a condominium association,  
381 cooperative association, homeowners' association, or mobile home  
382 owners' association is restricted to membership in such  
383 association and membership is appurtenant to ownership of a  
384 unit, parcel, or mobile home, a grantor of a trust described in  
385 s. 733.707(3), or a qualified beneficiary as defined in s.  
386 736.0103~~(14)~~ of a trust which owns a unit, parcel, or mobile  
387 home shall be deemed a member of the association and eligible to  
388 serve as a director of the condominium association, cooperative  
389 association, homeowners' association, or mobile home owners'  
390 association, provided that said beneficiary occupies the unit,  
391 parcel, or mobile home.

392 Section 16. Subsections (2) and (11) of section 731.201,  
393 Florida Statutes, are amended to read:

394 731.201 General definitions.—Subject to additional  
395 definitions in subsequent chapters that are applicable to  
396 specific chapters or parts, and unless the context otherwise  
397 requires, in this code, in s. 409.9101, and in chapters 736,  
398 738, 739, and 744, the term:

399 (2) "Beneficiary" means heir at law in an intestate estate  
400 and devisee in a testate estate. The term "beneficiary" does not  
401 apply to an heir at law or a devisee after that person's  
402 interest in the estate has been satisfied. In the case of a  
403 devise to an existing trust or trustee, or to a trust or trustee  
404 described by will, the trustee is a beneficiary of the estate.  
405 Except as otherwise provided in this subsection, the beneficiary  
406 of the trust is not a beneficiary of the estate of which that

597-02819-13

2013492c2

407 trust or the trustee of that trust is a beneficiary. However, if  
408 each trustee is also a personal representative of the estate,  
409 each qualified beneficiary of the trust as defined in s.  
410 736.0103~~(14)~~ shall be regarded as a beneficiary of the estate.

411 (11) "Devisee" means a person designated in a will or trust  
412 to receive a devise. Except as otherwise provided in this  
413 subsection, in the case of a devise to an existing trust or  
414 trustee, or to a trust or trustee of a trust described by will,  
415 the trust or trustee, rather than the beneficiaries of the  
416 trust, is the devisee. However, if each trustee is also a  
417 personal representative of the estate, each qualified  
418 beneficiary of the trust as defined in s. 736.0103~~(14)~~ shall be  
419 regarded as a devisee.

420 Section 17. Subsection (1) of section 733.212, Florida  
421 Statutes, is amended to read:

422 733.212 Notice of administration; filing of objections.—

423 (1) The personal representative shall promptly serve a copy  
424 of the notice of administration on the following persons who are  
425 known to the personal representative:

426 (a) The decedent's surviving spouse;

427 (b) Beneficiaries;

428 (c) The trustee of any trust described in s. 733.707(3) and  
429 each qualified beneficiary of the trust as defined in s.

430 736.0103~~(14)~~, if each trustee is also a personal representative  
431 of the estate; and

432 (d) Persons who may be entitled to exempt property

433

434 in the manner provided for service of formal notice, unless  
435 served under s. 733.2123. The personal representative may

597-02819-13

2013492c2

436 similarly serve a copy of the notice on any devisees under a  
437 known prior will or heirs or others who claim or may claim an  
438 interest in the estate.

439 Section 18. Paragraph (f) of subsection (5) of section  
440 736.0802, Florida Statutes, is amended to read:

441 736.0802 Duty of loyalty.—

442 (5)

443 (f)1. The trustee of a trust as defined in s. 731.201 may  
444 request authority to invest in investment instruments described  
445 in this subsection other than a qualified investment instrument,  
446 by providing to all qualified beneficiaries a written request  
447 containing the following:

448 a. The name, telephone number, street address, and mailing  
449 address of the trustee and of any individuals who may be  
450 contacted for further information.

451 b. A statement that the investment or investments cannot be  
452 made without the consent of a majority of each class of the  
453 qualified beneficiaries.

454 c. A statement that, if a majority of each class of  
455 qualified beneficiaries consent, the trustee will have the right  
456 to make investments in investment instruments, as defined in s.  
457 660.25(6), which are owned or controlled by the trustee or its  
458 affiliate, or from which the trustee or its affiliate receives  
459 compensation for providing services in a capacity other than as  
460 trustee, that such investment instruments may include investment  
461 instruments sold primarily to trust accounts, and that the  
462 trustee or its affiliate may receive fees in addition to the  
463 trustee's compensation for administering the trust.

464 d. A statement that the consent may be withdrawn



597-02819-13

2013492c2

465 prospectively at any time by written notice given by a majority  
466 of any class of the qualified beneficiaries.

467

468 A statement by the trustee is not delivered if the statement is  
469 accompanied by another written communication other than a  
470 written communication by the trustee that refers only to the  
471 statement.

472 2. For purposes of paragraph (e) and this paragraph:

473 a. "Majority of the qualified beneficiaries" means:

474 (I) If at the time the determination is made there are one  
475 or more beneficiaries as described in s. 736.0103(16)(c)  
476 ~~736.0103(14)(e)~~, at least a majority in interest of the  
477 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~,  
478 at least a majority in interest of the beneficiaries described  
479 in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, and at least a majority  
480 in interest of the beneficiaries described in s. 736.0103(16)(c)  
481 ~~736.0103(14)(e)~~, if the interests of the beneficiaries are  
482 reasonably ascertainable; otherwise, a majority in number of  
483 each such class; or

484 (II) If there is no beneficiary as described in s.  
485 736.0103(16)(c) ~~736.0103(14)(e)~~, at least a majority in interest  
486 of the beneficiaries described in s. 736.0103(16)(a)  
487 ~~736.0103(14)(a)~~ and at least a majority in interest of the  
488 beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~,  
489 if the interests of the beneficiaries are reasonably  
490 ascertainable; otherwise, a majority in number of each such  
491 class.

492 b. "Qualified investment instrument" means a mutual fund,  
493 common trust fund, or money market fund described in and

597-02819-13

2013492c2

494 governed by s. 736.0816(3).

495 c. An irrevocable trust is created upon execution of the  
496 trust instrument. If a trust that was revocable when created  
497 thereafter becomes irrevocable, the irrevocable trust is created  
498 when the right of revocation terminates.

499 Section 19. Paragraph (a) of subsection (2) of section  
500 736.08125, Florida Statutes, is amended to read:

501 736.08125 Protection of successor trustees.—

502 (2) For the purposes of this section, the term:

503 (a) "Eligible beneficiaries" means:

504 1. At the time the determination is made, if there are one  
505 or more beneficiaries as described in s. 736.0103(16)(c)  
506 ~~736.0103(14)(e)~~, the beneficiaries described in s.

507 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

508 2. If there is no beneficiary as described in s.

509 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in  
510 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

511 Section 20. Paragraph (d) of subsection (9) of section  
512 738.104, Florida Statutes, is amended to read:

513 738.104 Trustee's power to adjust.—

514 (9)

515 (d) For purposes of subsection (8) and this subsection, the  
516 term:

517 1. "Eligible beneficiaries" means:

518 a. If at the time the determination is made there are one  
519 or more beneficiaries described in s. 736.0103(16)(c)  
520 ~~736.0103(14)(e)~~, the beneficiaries described in s.

521 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

522 b. If there is no beneficiary described in s.

597-02819-13

2013492c2

523 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in  
524 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

525 2. "Super majority of the eligible beneficiaries" means:

526 a. If at the time the determination is made there are one  
527 or more beneficiaries described in s. 736.0103(16)(c)  
528 ~~736.0103(14)(e)~~, at least two-thirds in interest of the  
529 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or  
530 two-thirds in interest of the beneficiaries described in s.  
531 736.0103(16)(c) ~~736.0103(14)(e)~~, if the interests of the  
532 beneficiaries are reasonably ascertainable; otherwise, it means  
533 two-thirds in number of either such class; or

534 b. If there is no beneficiary described in s.  
535 736.0103(16)(c) ~~736.0103(14)(e)~~, at least two-thirds in interest  
536 of the beneficiaries described in s. 736.0103(16)(a)  
537 ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries  
538 described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the  
539 interests of the beneficiaries are reasonably ascertainable,  
540 otherwise, two-thirds in number of either such class.

541 Section 21. This act shall take effect October 1, 2013.