

By the Committee on Judiciary; and Senator Young

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1 A bill to be entitled
2 An act relating to trusts; amending s. 736.0103, F.S.;
3 redefining the term "interests of the beneficiaries";
4 amending s. 736.0105, F.S.; deleting a requirement
5 that a trust be for the benefit of the trust's
6 beneficiaries; amending s. 736.0109, F.S.; revising
7 provisions relating to notice or sending of electronic
8 trust documents; providing requirements for such
9 documents to be deemed sent; requiring a certain
10 authorization to specify documents subject to
11 electronic posting; revising requirements for a
12 recipient to electronically access such documents;
13 prohibiting the termination of a recipient's
14 electronic access to such documents from invalidating
15 certain notice or sending of electronic trust
16 documents; tolling specified limitations periods under
17 certain circumstances; providing requirements for
18 electronic access to such documents to be deemed
19 terminated by a sender; providing applicability;
20 amending s. 736.0110, F.S.; providing that the
21 Attorney General has standing to assert certain rights
22 in certain proceedings; amending s. 736.0404, F.S.;
23 deleting a restriction on the purpose for which a
24 trust is created; amending s. 736.04117, F.S.;
25 defining and redefining terms; authorizing an
26 authorized trustee to appoint all or part of the
27 principal of a trust to a second trust under certain
28 circumstances; providing requirements for the second
29 trust and its beneficiaries; providing that the second

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30 trust may retain, omit, or create specified powers;
31 authorizing the term of the second trust to extend
32 beyond the term of the first trust; providing
33 requirements for distributions to a second trust when
34 the authorized trustee does not have absolute power;
35 providing requirements for such second trust;
36 providing requirements for grants of power by the
37 second trust; authorizing a second trust created by an
38 authorized trustee without absolute power to grant
39 absolute power to the second trust's trustee;
40 authorizing an authorized trustee to appoint the
41 principal of a first trust to a supplemental needs
42 trust under certain circumstances; providing
43 requirements for such supplemental needs trust;
44 prohibiting an authorized trustee from distributing
45 the principal of a trust in a manner that would reduce
46 specified tax benefits; prohibiting the distribution
47 of S corporation stock from a first trust to a second
48 trust under certain circumstances; prohibiting a
49 settlor from being treated as the owner of a second
50 trust if he or she was not treated as the owner of the
51 first trust; prohibiting an authorized trustee from
52 distributing a trust's interest in property to a
53 second trust if it is subject to specified rules of
54 the Internal Revenue Code; prohibiting the exercise of
55 power to invade a trust's principal to increase an
56 authorized trustee's compensation or relieve him or
57 her from certain liability; specifying who an
58 authorized trustee must notify when he or she

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59 exercises his or her power to invade the trust's
60 principal; specifying the documents that the
61 authorized trustee must provide with such notice;
62 amending s. 736.0708, F.S.; providing that a cotrustee
63 is entitled to reasonable compensation when the trust
64 does not specify compensation; providing that
65 reasonable compensation may be greater for multiple
66 trustees than for a single trustee; amending s.
67 736.08135, F.S.; revising applicability; amending s.
68 736.1008, F.S.; clarifying that certain knowledge by a
69 beneficiary does not cause a claim for breach of trust
70 or commence the running of a period of limitations or
71 laches; providing intent; providing for retroactive
72 application; amending s. 736.1201, F.S.; defining the
73 term "delivery of notice"; conforming a provision to
74 changes made by the act; amending s. 736.1205, F.S.;
75 requiring an authorized trustee to provide certain
76 notice to the Attorney General rather than the state
77 attorney; amending ss. 736.1206, 736.1207, 736.1208,
78 and 736.1209, F.S.; conforming provisions; providing
79 effective dates.

80

81 Be It Enacted by the Legislature of the State of Florida:

82

83 Section 1. Subsection (11) of section 736.0103, Florida
84 Statutes, is amended to read:

85 736.0103 Definitions.—Unless the context otherwise
86 requires, in this code:

87 (11) "Interests of the beneficiaries" means the beneficial

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88 interests intended by the settlor as provided in the terms of a
89 ~~the~~ trust.

90 Section 2. Paragraph (c) of subsection (2) of section
91 736.0105, Florida Statutes, is amended to read:

92 736.0105 Default and mandatory rules.-

93 (2) The terms of a trust prevail over any provision of this
94 code except:

95 (c) ~~The requirement that a trust and its terms be for the~~
96 ~~benefit of the trust's beneficiaries, and that the trust have a~~
97 ~~purpose that is lawful, not contrary to public policy, and~~
98 ~~possible to achieve.~~

99 Section 3. Subsections (1) and (3) of section 736.0109,
100 Florida Statutes, are amended to read:

101 736.0109 Methods and waiver of notice.-

102 (1) Notice to a person under this code or the sending of a
103 document to a person under this code must be accomplished in a
104 manner reasonably suitable under the circumstances and likely to
105 result in receipt of the notice or document. Permissible methods
106 of notice or for sending a document include first-class mail,
107 personal delivery, delivery to the person's last known place of
108 residence or place of business, ~~or~~ a properly directed facsimile
109 or other electronic message, or posting to a secure electronic
110 account or website in accordance with subsection (3).

111 (3) A document that is sent solely by posting to an
112 electronic account or website is not deemed sent for purposes of
113 this section unless the sender complies with this subsection.
114 The sender has the burden of proving compliance with this
115 subsection ~~In addition to the methods listed in subsection (1)~~
116 ~~for sending a document, a sender may post a document to a secure~~

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117 ~~electronic account or website where the document can be~~
118 ~~accessed.~~

119 (a) ~~Before a document may be posted to an electronic~~
120 ~~account or website,~~ The recipient must sign a separate written
121 authorization solely for the purpose of authorizing the sender
122 to post documents on an electronic account or website before
123 such posting. The written authorization must:

124 1. Specifically indicate whether a trust accounting, trust
125 disclosure document, or limitation notice, as those terms are
126 defined in s. 736.1008(4), will be posted in this manner, and
127 generally enumerate the other types of documents that may be
128 posted in this manner.

129 2. Contain specific instructions for accessing the
130 electronic account or website, including the security procedures
131 required to access the electronic account or website, such as a
132 username and password.

133 3. Advise the recipient that a separate notice will be sent
134 when a document is posted to the electronic account or website
135 and the manner in which the separate notice will be sent.

136 4. Advise the recipient that the authorization to receive
137 documents by electronic posting may be amended or revoked at any
138 time and include specific instructions for revoking or amending
139 the authorization, including the address designated for the
140 purpose of receiving notice of the revocation or amendment.

141 5. Advise the recipient that posting a document on the
142 electronic account or website may commence a limitations period
143 as short as 6 months even if the recipient never actually
144 accesses the electronic account, electronic website, or ~~the~~
145 document.

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146 (b) Once the recipient signs the written authorization, the
147 sender must provide a separate notice to the recipient when a
148 document is posted to the electronic account or website. As used
149 in this subsection, the term "separate notice" means a notice
150 sent to the recipient by means other than electronic posting,
151 which identifies each document posted to the electronic account
152 or website and provides instructions for accessing the ~~posted~~
153 document. The separate notice requirement is deemed satisfied if
154 the recipient accesses the document on the electronic account or
155 website.

156 (c) A document sent by electronic posting is deemed
157 received by the recipient on the earlier of the date on which
158 ~~that~~ the separate notice is received or the date on which ~~that~~
159 the recipient accesses the document on the electronic account or
160 website.

161 (d) At least annually after a recipient signs a written
162 authorization, a sender shall send a notice advising recipients
163 who have authorized one or more documents to be posted to an
164 electronic account or website that such posting may commence a
165 limitations period as short as 6 months even if the recipient
166 never accesses the electronic account or website or the document
167 and that authority to receive documents by electronic posting
168 may be amended or revoked at any time. This notice must be given
169 by means other than electronic posting and may not be
170 accompanied by any other written communication. Failure to
171 provide such notice within 380 days after the last notice is
172 deemed to automatically revoke the authorization to receive
173 documents in the manner permitted under this subsection 380 days
174 after the last notice is sent.

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175 (e) The notice required in paragraph (d) may be in
176 substantially the following form: "You have authorized the
177 receipt of documents through posting to an electronic account or
178 website on which ~~where~~ the documents can be accessed. This
179 notice is being sent to advise you that a limitations period,
180 which may be as short as 6 months, may be running as to matters
181 disclosed in a trust accounting or other written report of a
182 trustee posted to the electronic account or website even if you
183 never actually access the electronic account or website or the
184 documents. You may amend or revoke the authorization to receive
185 documents by electronic posting at any time. If you have any
186 questions, please consult your attorney."

187 (f) A sender may rely on the recipient's authorization
188 until the recipient amends or revokes the authorization by
189 sending a notice to the address designated for that purpose in
190 the authorization or in the manner specified on the electronic
191 account or website. The recipient, at any time, may amend or
192 revoke an authorization to have documents posted on the
193 electronic account or website.

194 (g) If a document is provided to a recipient solely through
195 electronic posting and is deemed sent for purposes of this
196 section:

197 1. The recipient must be able to access and print or
198 download the document until the earlier of:

199 a. The date on which the recipient's access to the
200 electronic account or website is terminated for any reason; or

201 b. Four ~~must remain accessible to the recipient on the~~
202 ~~electronic account or website for at least 4 years after the~~
203 date on which ~~that~~ the document is deemed received by the

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204 recipient.

205 2. If the recipient's access to the electronic account or
206 website is terminated for any reason, such termination does not
207 invalidate the notice or sending of any document previously
208 posted on the electronic account or website in accordance with
209 this subsection ~~The electronic account or website must allow the~~
210 ~~recipient to download or print the document. This subsection~~
211 ~~does not affect or alter the duties of a trustee to keep clear,~~
212 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
213 ~~or alter the time periods for which the trustee must maintain~~
214 ~~those records.~~

215 3. If the recipient's access to the electronic account or
216 website is terminated by the sender before the time period set
217 forth in sub-subparagraph 1.b., any applicable limitations
218 period set forth in s. 736.1008(1) or (2) which is still open is
219 tolled for any information adequately disclosed in such document
220 as follows:

221 a. From the date on which the recipient's access to the
222 electronic account or website is terminated by the sender until
223 45 days after the date on which the sender provides notification
224 of such termination to the recipient by means other than
225 electronic posting, and:

226 (I) The recipient may request that any documents sent
227 during the prior 4 years solely through electronic posting be
228 provided to him or her by other means at no cost; or

229 (II) The recipient's access to the electronic account or
230 website is restored; and

231 b. From the date on which any request is made pursuant to
232 sub-sub-subparagraph 3.a.(I) until 20 days after the date on

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233 which the requested documents are provided to the recipient by
234 means other than electronic posting.

235 (h) For purposes of this subsection, access to an
236 electronic account or website is terminated by the sender when
237 the sender unilaterally terminates the recipient's ability to
238 access the electronic website or account or download or print
239 any document posted on such website or account. Access is not
240 terminated by the sender when access is terminated by an action
241 of the recipient or by an action of the sender in response to
242 the recipient's request to terminate access. The recipient's
243 revocation of authorization pursuant to paragraph (f) is not
244 considered a request to terminate access ~~To be effective, the~~
245 ~~posting of a document to an electronic account or website must~~
246 ~~be done in accordance with this subsection. The sender has the~~
247 ~~burden of establishing compliance with this subsection.~~

248 (i) This subsection does not affect or alter the duties of
249 a trustee to keep clear, distinct, and accurate records pursuant
250 to s. 736.0810 or affect or alter the time periods for which the
251 trustee must maintain such records ~~preclude the sending of a~~
252 ~~document by other means.~~

253 (j) This subsection governs the posting of a document
254 solely for the purpose of giving notice under this code or the
255 sending of a document to a person under this code and does not
256 prohibit or otherwise apply to the posting of a document to an
257 electronic account or website for any other purpose or preclude
258 the sending of a document by any other means.

259 Section 4. Subsection (3) of section 736.0110, Florida
260 Statutes, is amended to read:

261 736.0110 Others treated as qualified beneficiaries.—

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262 (3) The Attorney General may assert the rights of a
263 qualified beneficiary with respect to a charitable trust having
264 its principal place of administration in this state. The
265 Attorney General has standing to assert such rights in any
266 judicial proceedings.

267 Section 5. Section 736.0404, Florida Statutes, is amended
268 to read:

269 736.0404 Trust purposes.—A trust may be created only to the
270 extent the purposes of the trust are lawful, not contrary to
271 public policy, and possible to achieve. ~~A trust and its terms~~
272 ~~must be for the benefit of its beneficiaries.~~

273 Section 6. Effective upon becoming a law, section
274 736.04117, Florida Statutes, is amended to read:

275 736.04117 Trustee's power to invade principal in trust.—

276 (1) DEFINITIONS.—As used in this section, the term:

277 (a) "Absolute power" means ~~Unless the trust instrument~~
278 ~~expressly provides otherwise, a trustee who has absolute power~~
279 ~~under the terms of a trust to invade the principal of the trust,~~
280 ~~referred to in this section as the "first trust," to make~~
281 ~~distributions to or for the benefit of one or more persons may~~
282 ~~instead exercise the power by appointing all or part of the~~
283 ~~principal of the trust subject to the power in favor of a~~
284 ~~trustee of another trust, referred to in this section as the~~
285 ~~"second trust," for the current benefit of one or more of such~~
286 ~~persons under the same trust instrument or under a different~~
287 ~~trust instrument; provided:~~

288 1. ~~The beneficiaries of the second trust may include only~~
289 ~~beneficiaries of the first trust;~~

290 2. ~~The second trust may not reduce any fixed income,~~

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291 ~~annuity, or unitrust interest in the assets of the first trust,~~
292 ~~and~~

293 ~~3. If any contribution to the first trust qualified for a~~
294 ~~marital or charitable deduction for federal income, gift, or~~
295 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
296 ~~amended, the second trust shall not contain any provision which,~~
297 ~~if included in the first trust, would have prevented the first~~
298 ~~trust from qualifying for such a deduction or would have reduced~~
299 ~~the amount of such deduction.~~

300 ~~(b) For purposes of this subsection, an absolute power to~~
301 ~~invade principal shall include a power to invade principal that~~
302 ~~is not limited to specific or ascertainable purposes, such as~~
303 ~~health, education, maintenance, and support, regardless of~~
304 ~~whether or not the term "absolute" is used. A power to invade~~
305 ~~principal for purposes such as best interests, welfare, comfort,~~
306 ~~or happiness constitutes shall constitute an absolute power not~~
307 ~~limited to specific or ascertainable purposes.~~

308 (b) "Authorized trustee" means a trustee, other than the
309 settlor or a beneficiary, who has the power to invade the
310 principal of a trust.

311 (c) "Beneficiary with a disability" means a beneficiary of
312 the first trust who the authorized trustee believes may qualify
313 for governmental benefits based on disability, regardless of
314 whether the beneficiary currently receives those benefits or has
315 been adjudicated incapacitated.

316 (d) "Current beneficiary" means a beneficiary who, on the
317 date his or her qualification is determined, is a distributee or
318 permissible distributee of trust income or principal. The term
319 includes the holder of a presently exercisable general power of

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320 appointment but does not include a person who is a beneficiary
321 only because he or she holds another power of appointment.

322 (e) "Governmental benefits" means financial aid or services
323 from any state, federal, or other public agency.

324 (f) "Internal Revenue Code" means the Internal Revenue Code
325 of 1986, as amended.

326 (g) "Power of appointment" has the same meaning as provided
327 in s. 731.201(30).

328 (h) "Presently exercisable general power of appointment"
329 means a power of appointment exercisable by the powerholder at
330 the relevant time. The term:

331 1. Includes a power of appointment that is exercisable only
332 after the occurrence of a specified event or that is subject to
333 a specified restriction, but only after the event has occurred
334 or the restriction has been satisfied.

335 2. Does not include a power exercisable only upon the
336 powerholder's death.

337 (i) "Substantially similar" means that there is no material
338 change in a beneficiary's beneficial interests or in the power
339 to make distributions and that the power to make a distribution
340 under a second trust for the benefit of a beneficiary who is an
341 individual is substantially similar to the power under the first
342 trust to make a distribution directly to the beneficiary. A
343 distribution is deemed to be for the benefit of a beneficiary
344 if:

345 1. The distribution is applied for the benefit of a
346 beneficiary;

347 2. The beneficiary is under a legal disability or the
348 trustee reasonably believes the beneficiary is incapacitated,

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349 and the distribution is made as permitted under this code; or

350 3. The distribution is made as permitted under the terms of
351 the first trust instrument and the second trust instrument for
352 the benefit of the beneficiary.

353 (j) "Supplemental needs trust" means a trust that the
354 authorized trustee believes would not be considered a resource
355 for purposes of determining whether the beneficiary who has a
356 disability is eligible for governmental benefits.

357 (k) "Vested interest" means a current unconditional right
358 to receive a mandatory distribution of income, a specified
359 dollar amount, or a percentage of value of a trust, or a current
360 unconditional right to withdraw income, a specified dollar
361 amount, or a percentage of value of a trust, which right is not
362 subject to the occurrence of a specified event, the passage of a
363 specified time, or the exercise of discretion.

364 1. The term includes a presently exercisable general power
365 of appointment.

366 2. The term does not include a beneficiary's interest in a
367 trust if the trustee has discretion to make a distribution of
368 trust property to a person other than such beneficiary.

369 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
370 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

371 (a) Unless a trust instrument expressly provides otherwise,
372 an authorized trustee who has absolute power under the terms of
373 the trust to invade its principal, referred to in this section
374 as the "first trust," to make current distributions to or for
375 the benefit of one or more beneficiaries may instead exercise
376 such power by appointing all or part of the principal of the
377 trust subject to such power in favor of a trustee of one or more

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378 other trusts, whether created under the same trust instrument as
379 the first trust or a different trust instrument, including a
380 trust instrument created for the purposes of exercising the
381 power granted by this section, each referred to in this section
382 as the "second trust," for the current benefit of one or more of
383 such beneficiaries only if:

384 1. The beneficiaries of the second trust include only
385 beneficiaries of the first trust; and

386 2. The second trust does not reduce any vested interest.

387 (b) In an exercise of absolute power, the second trust may:

388 1. Retain a power of appointment granted in the first
389 trust;

390 2. Omit a power of appointment granted in the first trust,
391 other than a presently exercisable general power of appointment;

392 3. Create or modify a power of appointment if the
393 powerholder is a current beneficiary of the first trust;

394 4. Create or modify a power of appointment if the
395 powerholder is a beneficiary of the first trust who is not a
396 current beneficiary, but the exercise of the power of
397 appointment may take effect only after the powerholder becomes,
398 or would have become if then living, a current beneficiary of
399 the first trust; and

400 5. Extend the term of the second trust beyond the term of
401 the first trust.

402 (c) The class of permissible appointees in favor of which a
403 created or modified power of appointment may be exercised may
404 differ from the class identified in the first trust.

405 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
406 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.-

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407 Unless the trust instrument expressly provides otherwise, an
408 authorized trustee who has a power, other than an absolute
409 power, under the terms of a first trust to invade principal to
410 make current distributions to or for the benefit of one or more
411 beneficiaries may instead exercise such power by appointing all
412 or part of the principal of the first trust subject to such
413 power in favor of a trustee of one or more second trusts. If the
414 authorized trustee exercises such power:

415 (a) The second trusts, in the aggregate, shall grant each
416 beneficiary of the first trust beneficial interests in the
417 second trusts which are substantially similar to the beneficial
418 interests of the beneficiary in the first trust.

419 (b) If the first trust grants a power of appointment to a
420 beneficiary of the first trust, the second trust shall grant
421 such power of appointment in the second trust to such
422 beneficiary, and the class of permissible appointees shall be
423 the same as in the first trust.

424 (c) If the first trust does not grant a power of
425 appointment to a beneficiary of the first trust, then the second
426 trust may not grant a power of appointment in the second trust
427 to such beneficiary.

428 (d) Notwithstanding paragraphs (a), (b), and (c), the term
429 of the second trust may extend beyond the term of the first
430 trust, and, for any period after the first trust would have
431 otherwise terminated, in whole or in part, under the provisions
432 of the first trust, the trust instrument of the second trust
433 may, with respect to property subject to such extended term:

434 1. Include language providing the trustee with the absolute
435 power to invade the principal of the second trust during such

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436 extended term; and

437 2. Create a power of appointment, if the powerholder is a
438 current beneficiary of the first trust, or expand the class of
439 permissible appointees in favor of which a power of appointment
440 may be exercised.

441 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
442 TRUST.—

443 (a) Notwithstanding subsections (2) and (3), unless the
444 trust instrument expressly provides otherwise, an authorized
445 trustee who has the power under the terms of a first trust to
446 invade the principal of the first trust to make current
447 distributions to or for the benefit of a beneficiary with a
448 disability may instead exercise such power by appointing all or
449 part of the principal of the first trust in favor of a trustee
450 of a second trust that is a supplemental needs trust if:

451 1. The supplemental needs trust benefits the beneficiary
452 with a disability;

453 2. The beneficiaries of the second trust include only
454 beneficiaries of the first trust; and

455 3. The authorized trustee determines that the exercise of
456 such power will further the purposes of the first trust.

457 (b) Except as affected by any change to the interests of
458 the beneficiary with a disability, the second trusts, in the
459 aggregate, shall grant each other beneficiary of the first trust
460 beneficial interests in the second trusts which are
461 substantially similar to such beneficiary's beneficial interests
462 in the first trust.

463 (5) PROHIBITED DISTRIBUTIONS.—

464 (a) An authorized trustee may not distribute the principal

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465 of a trust under this section in a manner that would prevent a
466 contribution to that trust from qualifying for, or that would
467 reduce the exclusion, deduction, or other federal tax benefit
468 that was originally claimed or could have been claimed for, that
469 contribution, including:

470 1. The exclusions under s. 2503(b) or s. 2503(c) of the
471 Internal Revenue Code;

472 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
473 of the Internal Revenue Code;

474 3. A charitable deduction under s. 170(a), s. 642(c), s.
475 2055(a), or s. 2522(a) of the Internal Revenue Code;

476 4. Direct skip treatment under s. 2642(c) of the Internal
477 Revenue Code; or

478 5. Any other tax benefit for income, gift, estate, or
479 generation-skipping transfer tax purposes under the Internal
480 Revenue Code.

481 (b) If S corporation stock is held in the first trust, an
482 authorized trustee may not distribute all or part of that stock
483 to a second trust that is not a permitted shareholder under s.
484 1361(c)(2) of the Internal Revenue Code. If the first trust
485 holds stock in an S corporation and is, or but for provisions of
486 paragraphs (a), (c), and (d) would be, a qualified subchapter S
487 trust within the meaning of s. 1361(d) of the Internal Revenue
488 Code, the second trust instrument may not include or omit a term
489 that prevents it from qualifying as a qualified subchapter S
490 trust.

491 (c) Except as provided in paragraphs (a), (b), and (d), an
492 authorized trustee may distribute the principal of a first trust
493 to a second trust regardless of whether the settlor is treated

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494 as the owner of either trust under ss. 671-679 of the Internal
495 Revenue Code; however, if the settlor is not treated as the
496 owner of the first trust, he or she may not be treated as the
497 owner of the second trust unless he or she at all times has the
498 power to cause the second trust to cease being treated as if it
499 were owned by the settlor.

500 (d) If an interest in property which is subject to the
501 minimum distribution rules of s. 401(a)(9) of the Internal
502 Revenue Code is held in trust, an authorized trustee may not
503 distribute such an interest to a second trust under subsection
504 (2), subsection (3), or subsection (4) if the distribution would
505 shorten the otherwise applicable maximum distribution period.

506 (6) EXERCISE BY WRITING.—The exercise of a power to invade
507 principal under subsection (2), subsection (3), or subsection
508 (4) must ~~The exercise of a power to invade principal under~~
509 ~~subsection (1) shall be by a written an instrument in writing,~~
510 signed and acknowledged by the authorized trustee, and filed
511 with the records of the first trust.

512 (7)~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
513 power to invade principal under subsection (2), subsection (3),
514 or subsection (4):

515 (a) Is ~~(1)~~ shall be considered the exercise of a power of
516 appointment, excluding other than a power to appoint to the
517 authorized trustee, the authorized trustee's creditors, the
518 authorized trustee's estate, or the creditors of the authorized
519 trustee's estate.

520 (b) Is, ~~and shall be~~ subject to the provisions of s.
521 689.225 covering the time at which the permissible period of the
522 rule against perpetuities begins and the law that determines the

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523 permissible period of the rule against perpetuities of the first
524 trust.

525 (c) May be to a second trust created or administered under
526 the law of any jurisdiction.

527 (d) May not:

528 1. Increase the authorized trustee's compensation beyond
529 the compensation specified in the first trust instrument; or

530 2. Relieve the authorized trustee from liability for breach
531 of trust or provide for indemnification of the authorized
532 trustee for any liability or claim to a greater extent than the
533 first trust instrument; however, the exercise of the power may
534 divide and reallocate fiduciary powers among fiduciaries and
535 relieve a fiduciary from liability for an act or failure to act
536 of another fiduciary as otherwise allowed under law or common
537 law.

538 (8) NOTICE.-

539 (a) ~~(4)~~ The authorized trustee shall provide written
540 notification of the manner in which he or she intends to
541 exercise his or her power to invade principal to ~~notify~~ all
542 qualified beneficiaries of the following parties ~~first trust, in~~
543 writing, at least 60 days ~~before~~ ~~prior to~~ the effective date of
544 the authorized trustee's exercise of such power ~~the trustee's~~
545 power to invade principal pursuant to subsection (2), subsection
546 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
547 intends to exercise the power.

548 1. All qualified beneficiaries of the first trust;

549 2. If paragraph (5)(c) applies, the settlor of the first
550 trust;

551 3. All trustees of the first trust; and

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552 4. Any person who has the power to remove or replace the
553 authorized trustee of the first trust.

554 (b) The authorized A copy of the proposed instrument
555 exercising the power shall satisfy the trustee's notice
556 obligation to provide notice under this subsection is satisfied
557 when he or she provides copies of the proposed instrument
558 exercising the power, the trust instrument of the first trust,
559 and the proposed trust instrument of the second trust.

560 (c) If all of those required to be notified ~~qualified~~
561 ~~beneficiaries~~ waive the notice period by signed written
562 instrument delivered to the authorized trustee, the authorized
563 trustee's power to invade principal shall be exercisable
564 immediately.

565 (d) The authorized trustee's notice under this subsection
566 does ~~shall~~ not limit the right of any beneficiary to object to
567 the exercise of the authorized trustee's power to invade
568 principal except as otherwise provided in other applicable
569 provisions of this code.

570 (9) (5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
571 PROHIBITION.—The exercise of the power to invade principal under
572 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
573 prohibited by a spendthrift clause or by a provision in the
574 trust instrument that prohibits amendment or revocation of the
575 trust.

576 (10) (6) NO DUTY TO EXERCISE.—Nothing in this section is
577 intended to create or imply a duty to exercise a power to invade
578 principal, and no inference of impropriety may ~~shall~~ be made as
579 a result of an authorized trustee's failure to exercise a
580 ~~trustee not exercising~~ the power to invade principal conferred

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581 under subsections (2), (3), and (4) ~~subsection (1)~~.

582 ~~(11)-(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS. The provisions~~
583 ~~of~~ This section may ~~shall~~ not be construed to abridge the right
584 of any trustee who has a power of invasion to appoint property
585 in further trust that arises under the terms of the first trust
586 or under any other section of this code or under another
587 provision of law or under common law.

588 Section 7. Subsection (1) of section 736.0708, Florida
589 Statutes, is amended to read:

590 736.0708 Compensation of trustee.—

591 (1) If the terms of a trust do not specify a ~~the~~ trustee's
592 compensation, the a trustee, including each cotrustee, is
593 entitled to compensation that is reasonable under the
594 circumstances. In the aggregate, the reasonable compensation for
595 multiple trustees may be greater than for a single trustee.

596 Section 8. Subsection (3) of section 736.08135, Florida
597 Statutes, is amended to read:

598 736.08135 Trust accountings.—

599 (3) Subsections (1) and (2) govern the form and content of
600 ~~This section applies to~~ all trust accountings rendered for any
601 accounting periods beginning on or after January 1, 2003, and
602 all trust accountings rendered on or after July 1, 2017. This
603 subsection does not affect the beginning period from which a
604 trustee is required to render a trust accounting.

605 Section 9. Subsection (3) of section 736.1008, Florida
606 Statutes, is amended to read:

607 736.1008 Limitations on proceedings against trustees.—

608 (3) When a trustee has not issued a final trust accounting
609 or has not given written notice to the beneficiary of the

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610 availability of the trust records for examination and that
611 claims with respect to matters not adequately disclosed may be
612 barred, a claim against the trustee for breach of trust based on
613 a matter not adequately disclosed in a trust disclosure document
614 is barred as provided in chapter 95 and accrues when the
615 beneficiary has actual knowledge of:

616 (a) The facts upon which the claim is based, if such actual
617 knowledge is established by clear and convincing evidence; or

618 (b) The trustee's repudiation of the trust or adverse
619 possession of trust assets.

620
621 Paragraph (a) applies to claims based upon acts or omissions
622 occurring on or after July 1, 2008. A beneficiary's actual
623 knowledge that he or she has not received a trust accounting
624 does not cause a claim to accrue against the trustee for breach
625 of trust based upon the failure to provide a trust accounting
626 required by s. 736.0813 or former s. 737.303 and does not
627 commence the running of any period of limitations or laches for
628 such a claim, and paragraph (a) and chapter 95 do not bar any
629 such claim.

630 Section 10. The changes to ss. 736.08135 and 736.1008,
631 Florida Statutes, made by this act are intended to clarify
632 existing law, are remedial in nature, and apply retroactively to
633 all cases pending or commenced on or after July 1, 2017.

634 Section 11. Present subsections (2), (3), and (4) of
635 section 736.1201, Florida Statutes, are redesignated as
636 subsections (3), (4), and (5), respectively, present subsection
637 (5) of that section is amended, and a new subsection (2) is
638 added to that section, to read:

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639 736.1201 Definitions.—As used in this part:

640 (2) "Delivery of notice" means delivery of a written notice
641 required under this part using any commercial delivery service
642 requiring a signed receipt or by any form of mail requiring a
643 signed receipt.

644 ~~(5) "State attorney" means the state attorney for the~~
645 ~~judicial circuit of the principal place of administration of the~~
646 ~~trust pursuant to s. 736.0108.~~

647 Section 12. Section 736.1205, Florida Statutes, is amended
648 to read:

649 736.1205 Notice that this part does not apply.—In the case
650 of a power to make distributions, if the trustee determines that
651 the governing instrument contains provisions that are more
652 restrictive than s. 736.1204(2), or if the trust contains other
653 powers, inconsistent with the provisions of s. 736.1204(3) that
654 specifically direct acts by the trustee, the trustee shall
655 notify the ~~state~~ Attorney General by delivery of notice when the
656 trust becomes subject to this part. Section 736.1204 does not
657 apply to any trust for which notice has been given pursuant to
658 this section unless the trust is amended to comply with the
659 terms of this part.

660 Section 13. Subsection (2) of section 736.1206, Florida
661 Statutes, is amended to read:

662 736.1206 Power to amend trust instrument.—

663 (2) In the case of a charitable trust that is not subject
664 to ~~the provisions of~~ subsection (1), the trustee may amend the
665 governing instrument to comply with ~~the provisions of~~ s.
666 736.1204(2) after delivery of notice to, and with the consent
667 of, ~~the state~~ Attorney General.

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668 Section 14. Section 736.1207, Florida Statutes, is amended
669 to read:

670 736.1207 Power of court to permit deviation.—This part does
671 not affect the power of a court to relieve a trustee from any
672 restrictions on the powers and duties that are placed on the
673 trustee by the governing instrument or applicable law for cause
674 shown and on complaint of the trustee, the state Attorney
675 General, or an affected beneficiary and notice to the affected
676 parties.

677 Section 15. Paragraph (b) of subsection (4) of section
678 736.1208, Florida Statutes, is amended to read:

679 736.1208 Release; property and persons affected; manner of
680 effecting.—

681 (4) Delivery of a release shall be accomplished as follows:

682 (b) If the release is accomplished by reducing the class of
683 permissible charitable organizations, by delivery of notice a
684 copy of the release to the ~~state~~ Attorney General, including a
685 copy of the release.

686 Section 16. Section 736.1209, Florida Statutes, is amended
687 to read:

688 736.1209 Election to come under this part.—With the consent
689 of that organization or organizations, a trustee of a trust for
690 the benefit of a public charitable organization or organizations
691 may come under s. 736.1208(5) by delivery of notice to filing
692 with the state Attorney General of the an election, accompanied
693 by the proof of required consent. Thereafter the trust shall be
694 subject to s. 736.1208(5).

695 Section 17. Except as otherwise provided in this act and
696 except for this section, which shall take effect upon becoming a

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697 law, this act shall take effect July 1, 2017.