

By the Committees on Banking and Insurance; and 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 to accrue for
70 breach of trust or commence the running of a period of
71 limitations or laches; providing Legislative intent;
72 providing for retroactive application; amending s.
73 736.1201, F.S.; defining the term "delivery of
74 notice"; conforming a provision to changes made by the
75 act; amending s. 736.1205, F.S.; requiring an
76 authorized trustee to provide certain notice to the
77 Attorney General rather than the state attorney;
78 amending ss. 736.1206, 736.1207, 736.1208, and
79 736.1209, F.S.; conforming provisions; providing
80 effective dates.

81

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

83

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

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

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88 (11) "Interests of the beneficiaries" means the beneficial
89 interests intended by the settlor as provided in the terms of a
90 ~~the~~ trust.

91 Section 2. Paragraph (c) of subsection (2) of section
92 736.0105, Florida Statutes, is amended to read:

93 736.0105 Default and mandatory rules.—

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

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

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

102 736.0109 Methods and waiver of notice.—

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

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

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117 ~~for sending a document, a sender may post a document to a secure~~
118 ~~electronic account or website where the document can be~~
119 ~~accessed.~~

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

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

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

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

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

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

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146 document.

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

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

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

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175 after the last notice is sent.

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

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

195 (g) If a document is provided to a recipient solely through
196 electronic posting pursuant to this subsection, the recipient
197 must be able to access and print or download the document until
198 the earlier of ~~remain accessible to the recipient on the~~
199 ~~electronic account or website for at least 4 years after the~~
200 ~~date that the document is deemed received by the recipient~~ or
201 the date upon which the recipient's access to the electronic
202 account or website is terminated for any reason.

203 1. If the recipient's access to the electronic account or

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204 website is terminated for any reason, such termination does not
205 invalidate the notice or sending of any document previously
206 posted on the electronic account or website in accordance with
207 this subsection, but may toll the applicable limitations period
208 as provided in subparagraph 2.

209 2. If the recipient's access to the electronic account or
210 website is terminated by the sender sooner than 4 years after
211 the date on which the document was received by the recipient,
212 any applicable limitations period set forth in s. 736.1008(1) or
213 (2) which is still running is tolled for any information
214 adequately disclosed in a document sent solely by electronic
215 posting, from the date on which the recipient's access to the
216 electronic account or website was terminated by the sender until
217 45 days after the date on which the sender provides one of the
218 following to the recipient by means other than electronic
219 posting:

220 a. Notice of such termination and notification to the
221 recipient that he or she may request that any documents sent
222 during the prior 4 years solely through electronic posting be
223 provided to him or her by other means at no cost; or

224 b. Notice of such termination and notification to the
225 recipient that his or her access to the electronic account or
226 website has been restored.

227
228 Any applicable limitations period is further tolled from the
229 date on which any request is made pursuant to sub-subparagraph
230 2.a. until 20 days after the date on which the requested
231 documents are provided to the recipient by means other than
232 electronic posting ~~The electronic account or website must allow~~

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233 ~~the recipient to download or print the document. This subsection~~
234 ~~does not affect or alter the duties of a trustee to keep clear,~~
235 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
236 ~~or alter the time periods for which the trustee must maintain~~
237 ~~those records.~~

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

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

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

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

264 736.0110 Others treated as qualified beneficiaries.—

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

270 Section 5. Section 736.0404, Florida Statutes, is amended
271 to read:

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

276 Section 6. Effective upon becoming a law, section
277 736.04117, Florida Statutes, is amended to read:

278 736.04117 Trustee's power to invade principal in trust.—

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

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

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291 ~~1. The beneficiaries of the second trust may include only~~
292 ~~beneficiaries of the first trust;~~

293 ~~2. The second trust may not reduce any fixed income,~~
294 ~~annuity, or unitrust interest in the assets of the first trust;~~
295 ~~and~~

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

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

311 ~~(b) "Authorized trustee" means a trustee, other than the~~
312 ~~settlor or a beneficiary, who has the power to invade the~~
313 ~~principal of a trust.~~

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

319 ~~(d) "Current beneficiary" means a beneficiary who, on the~~

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320 date his or her qualification is determined, is a distributee or
321 permissible distributee of trust income or principal. The term
322 includes the holder of a presently exercisable general power of
323 appointment but does not include a person who is a beneficiary
324 only because he or she holds another power of appointment.

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

327 (f) "Internal Revenue Code" means the Internal Revenue Code
328 of 1986, as amended.

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

331 (h) "Presently exercisable general power of appointment"
332 means a power of appointment exercisable by the powerholder at
333 the relevant time. The term:

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

338 2. Does not include a power exercisable only upon the
339 powerholder's death.

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

348 1. The distribution is applied for the benefit of a

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349 beneficiary;

350 2. The beneficiary is under a legal disability or the
351 trustee reasonably believes the beneficiary is incapacitated,
352 and the distribution is made as permitted under this code; or

353 3. The distribution is made as permitted under the terms of
354 the first trust instrument and the second trust instrument for
355 the benefit of the beneficiary.

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

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

367 1. The term includes a presently exercisable general power
368 of appointment.

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

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

374 (a) Unless a trust instrument expressly provides otherwise,
375 an authorized trustee who has absolute power under the terms of
376 the trust to invade its principal, referred to in this section
377 as the "first trust," to make current distributions to or for

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378 the benefit of one or more beneficiaries may instead exercise
379 such power by appointing all or part of the principal of the
380 trust subject to such power in favor of a trustee of one or more
381 other trusts, whether created under the same trust instrument as
382 the first trust or a different trust instrument, including a
383 trust instrument created for the purposes of exercising the
384 power granted by this section, each referred to in this section
385 as the "second trust," for the current benefit of one or more of
386 such beneficiaries only if:

387 1. The beneficiaries of the second trust include only
388 beneficiaries of the first trust; and

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

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

391 1. Retain a power of appointment granted in the first
392 trust;

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

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

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

403 5. Extend the term of the second trust beyond the term of
404 the first trust.

405 (c) The class of permissible appointees in favor of which a
406 created or modified power of appointment may be exercised may

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407 differ from the class identified in the first trust.

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

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

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

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

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

431 (d) Notwithstanding paragraphs (a), (b), and (c), the term
432 of the second trust may extend beyond the term of the first
433 trust, and, for any period after the first trust would have
434 otherwise terminated, in whole or in part, under the provisions
435 of the first trust, the trust instrument of the second trust

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436 may, with respect to property subject to such extended term:

437 1. Include language providing the trustee with the absolute
438 power to invade the principal of the second trust during such
439 extended term; and

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

444 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
445 TRUST.-

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

454 1. The supplemental needs trust benefits the beneficiary
455 with a disability;

456 2. The beneficiaries of the second trust include only
457 beneficiaries of the first trust; and

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

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

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465 in the first trust.

466 (5) PROHIBITED DISTRIBUTIONS.—

467 (a) An authorized trustee may not distribute the principal
468 of a trust under this section in a manner that would prevent a
469 contribution to that trust from qualifying for, or that would
470 reduce the exclusion, deduction, or other federal tax benefit
471 that was originally claimed or could have been claimed for, that
472 contribution, including:

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

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

477 3. A charitable deduction under s. 170(a), s. 642(c), s.
478 2055(a), or s. 2522(a) of the Internal Revenue Code;

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

481 5. Any other tax benefit for income, gift, estate, or
482 generation-skipping transfer tax purposes under the Internal
483 Revenue Code.

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

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494 (c) Except as provided in paragraphs (a), (b), and (d), an
495 authorized trustee may distribute the principal of a first trust
496 to a second trust regardless of whether the settlor is treated
497 as the owner of either trust under ss. 671-679 of the Internal
498 Revenue Code; however, if the settlor is not treated as the
499 owner of the first trust, he or she may not be treated as the
500 owner of the second trust unless he or she at all times has the
501 power to cause the second trust to cease being treated as if it
502 were owned by the settlor.

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

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

515 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
516 power to invade principal under subsection (2), subsection (3),
517 or subsection (4):

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

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523 ~~(b) Is, and shall be~~ subject to the provisions of s.
524 689.225 covering the time at which the permissible period of the
525 rule against perpetuities begins and the law that determines the
526 permissible period of the rule against perpetuities of the first
527 trust.

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

530 (d) May not:

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

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

541 (8) NOTICE.-

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

551 1. All qualified beneficiaries of the first trust;

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

554 3. All trustees of the first trust; and

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

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

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

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

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

579 (10) ~~(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
580 intended to create or imply a duty to exercise a power to invade

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581 principal, and no inference of impropriety may ~~shall~~ be made as
582 a result of an authorized trustee's failure to exercise a
583 ~~trustee not exercising~~ the power to invade principal conferred
584 under subsections (2), (3), and (4) ~~subsection (1)~~.

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

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

593 736.0708 Compensation of trustee.—

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

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

601 736.08135 Trust accountings.—

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

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

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610 736.1008 Limitations on proceedings against trustees.—

611 (3) When a trustee has not issued a final trust accounting
612 or has not given written notice to the beneficiary of the
613 availability of the trust records for examination and that
614 claims with respect to matters not adequately disclosed may be
615 barred, a claim against the trustee for breach of trust based on
616 a matter not adequately disclosed in a trust disclosure document
617 is barred as provided in chapter 95 and accrues when the
618 beneficiary has actual knowledge of:

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

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

623

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

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

637 Section 11. Present subsections (2), (3), and (4) of
638 section 736.1201, Florida Statutes, are redesignated as

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639 subsections (3), (4), and (5), respectively, present subsection
640 (5) of that section is amended, and a new subsection (2) is
641 added to that section, to read:

642 736.1201 Definitions.—As used in this part:

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

647 ~~(5) "State attorney" means the state attorney for the~~
648 ~~judicial circuit of the principal place of administration of the~~
649 ~~trust pursuant to s. 736.0108.~~

650 Section 12. Section 736.1205, Florida Statutes, is amended
651 to read:

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

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

665 736.1206 Power to amend trust instrument.—

666 (2) In the case of a charitable trust that is not subject
667 to ~~the provisions of~~ subsection (1), the trustee may amend the

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668 governing instrument to comply with ~~the provisions of~~ s.
669 736.1204(2) after delivery of notice to, and with the consent
670 of, the ~~state~~ Attorney General.

671 Section 14. Section 736.1207, Florida Statutes, is amended
672 to read:

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

680 Section 15. Paragraph (b) of subsection (4) of section
681 736.1208, Florida Statutes, is amended to read:

682 736.1208 Release; property and persons affected; manner of
683 effecting.—

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

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

689 Section 16. Section 736.1209, Florida Statutes, is amended
690 to read:

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

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697 subject to s. 736.1208(5).

698 Section 17. Except as otherwise provided in this act and
699 except for this section, which shall take effect upon becoming a
700 law, this act shall take effect July 1, 2017.