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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 456 - 474

and insert:

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

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

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



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12 Section 12. Paragraph (c) of subsection (2) of section
13 736.0105, Florida Statutes, is amended to read:

14 736.0105 Default and mandatory rules.—

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

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

21 Section 13. Subsections (1) and (3) of section 736.0109,
22 Florida Statutes, are amended to read:

23 736.0109 Methods and waiver of notice.—

24 (1) Notice to a person under this code or the sending of a
25 document to a person under this code must be accomplished in a
26 manner reasonably suitable under the circumstances and likely to
27 result in receipt of the notice or document. Permissible methods
28 of notice or for sending a document include first-class mail,
29 personal delivery, delivery to the person's last known place of
30 residence or place of business, ~~or~~ a properly directed facsimile
31 or other electronic message, or posting to a secure electronic
32 account or website in accordance with subsection (3).

33 (3) A document that is sent solely by posting to an
34 electronic account or website is not deemed sent for purposes of
35 this section unless the sender complies with this subsection.
36 The sender has the burden of proving compliance with this
37 subsection ~~In addition to the methods listed in subsection (1)~~
38 ~~for sending a document, a sender may post a document to a secure~~
39 ~~electronic account or website where the document can be~~
40 accessed.



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41 (a) ~~Before a document may be posted to an electronic~~
42 ~~account or website,~~ The recipient must sign a separate written
43 authorization solely for the purpose of authorizing the sender
44 to post documents on an electronic account or website before
45 such posting. The written authorization must:

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

51 2. Contain specific instructions for accessing the
52 electronic account or website, including the security procedures
53 required to access the electronic account or website, such as a
54 username and password.

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

58 4. Advise the recipient that the authorization to receive
59 documents by electronic posting may be amended or revoked at any
60 time and include specific instructions for revoking or amending
61 the authorization, including the address designated for the
62 purpose of receiving notice of the revocation or amendment.

63 5. Advise the recipient that posting a document on the
64 electronic account or website may commence a limitations period
65 as short as 6 months even if the recipient never actually
66 accesses the electronic account, electronic website, or ~~the~~
67 document.

68 (b) Once the recipient signs the written authorization, the
69 sender must provide a separate notice to the recipient when a



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70 document is posted to the electronic account or website. As used
71 in this subsection, the term "separate notice" means a notice
72 sent to the recipient by means other than electronic posting,
73 which identifies each document posted to the electronic account
74 or website and provides instructions for accessing the ~~posted~~
75 document. The separate notice requirement is deemed satisfied if
76 the recipient accesses the document on the electronic account or
77 website.

78 (c) A document sent by electronic posting is deemed
79 received by the recipient on the earlier of the date on which
80 ~~that~~ the separate notice is received or the date on which ~~that~~
81 the recipient accesses the document on the electronic account or
82 website.

83 (d) At least annually after a recipient signs a written
84 authorization, a sender shall send a notice advising recipients
85 who have authorized one or more documents to be posted to an
86 electronic account or website that such posting may commence a
87 limitations period as short as 6 months even if the recipient
88 never accesses the electronic account or website or the document
89 and that authority to receive documents by electronic posting
90 may be amended or revoked at any time. This notice must be given
91 by means other than electronic posting and may not be
92 accompanied by any other written communication. Failure to
93 provide such notice within 380 days after the last notice is
94 deemed to automatically revoke the authorization to receive
95 documents in the manner permitted under this subsection 380 days
96 after the last notice is sent.

97 (e) The notice required in paragraph (d) may be in
98 substantially the following form: "You have authorized the



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99 receipt of documents through posting to an electronic account or
100 website on which ~~where~~ the documents can be accessed. This
101 notice is being sent to advise you that a limitations period,
102 which may be as short as 6 months, may be running as to matters
103 disclosed in a trust accounting or other written report of a
104 trustee posted to the electronic account or website even if you
105 never actually access the electronic account or website or the
106 documents. You may amend or revoke the authorization to receive
107 documents by electronic posting at any time. If you have any
108 questions, please consult your attorney."

109 (f) A sender may rely on the recipient's authorization
110 until the recipient amends or revokes the authorization by
111 sending a notice to the address designated for that purpose in
112 the authorization or in the manner specified on the electronic
113 account or website. The recipient, at any time, may amend or
114 revoke an authorization to have documents posted on the
115 electronic account or website.

116 (g) If a document is provided to a recipient solely through
117 electronic posting pursuant to this subsection, the recipient
118 must be able to access and print or download the document until
119 the earlier of ~~remain accessible to the recipient on the~~
120 ~~electronic account or website for at least 4 years after the~~
121 date that the document is deemed received by the recipient or
122 the date upon which the recipient's access to the electronic
123 account or website is terminated for any reason.

124 1. If the recipient's access to the electronic account or
125 website is terminated for any reason, such termination does not
126 invalidate the notice or sending of any document previously
127 posted on the electronic account or website in accordance with



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128 this subsection, but may toll the applicable limitations period
129 as provided in subparagraph 2.

130 2. If the recipient's access to the electronic account or
131 website is terminated by the sender sooner than 4 years after
132 the date on which the document was received by the recipient,
133 any applicable limitations period set forth in s. 736.1008(1) or
134 (2) which is still running is tolled for any information
135 adequately disclosed in a document sent solely by electronic
136 posting, from the date on which the recipient's access to the
137 electronic account or website was terminated by the sender until
138 45 days after the date on which the sender provides one of the
139 following to the recipient by means other than electronic
140 posting:

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

145 b. Notice of such termination and notification to the
146 recipient that his or her access to the electronic account or
147 website has been restored.

148
149 Any applicable limitations period is further tolled from the
150 date on which any request is made pursuant to sub-subparagraph
151 2.a. until 20 days after the date on which the requested
152 documents are provided to the recipient by means other than
153 electronic posting ~~The electronic account or website must allow~~
154 ~~the recipient to download or print the document. This subsection~~
155 ~~does not affect or alter the duties of a trustee to keep clear,~~
156 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~



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157 ~~or alter the time periods for which the trustee must maintain~~
158 ~~those records.~~

159 (h) For purposes of this subsection, access to an
160 electronic account or website is terminated by the sender when
161 the sender unilaterally terminates the recipient's ability to
162 access the electronic website or account or download or print
163 any document posted on such website or account. Access is not
164 terminated by the sender when access is terminated by an action
165 of the recipient or by an action of the sender in response to
166 the recipient's request to terminate access. The recipient's
167 revocation of authorization pursuant to paragraph (f) is not
168 considered a request to terminate access ~~To be effective, the~~
169 ~~posting of a document to an electronic account or website must~~
170 ~~be done in accordance with this subsection. The sender has the~~
171 ~~burden of establishing compliance with this subsection.~~

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

177 (j) This subsection governs the posting of a document
178 solely for the purpose of giving notice under this code or the
179 sending of a document to a person under this code and does not
180 prohibit or otherwise apply to the posting of a document to an
181 electronic account or website for any other purpose or preclude
182 the sending of a document by any other means.

183 Section 14. Subsection (3) of section 736.0110, Florida
184 Statutes, is amended to read:

185 736.0110 Others treated as qualified beneficiaries.—



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186 (3) The Attorney General may assert the rights of a
187 qualified beneficiary with respect to a charitable trust having
188 its principal place of administration in this state. The
189 Attorney General has standing to assert such rights in any
190 judicial proceedings.

191 Section 15. Paragraph (b) of subsection (2) of section
192 736.0403, Florida Statutes, is amended to read:

193 736.0403 Trusts created in other jurisdictions; formalities
194 required for revocable trusts.—

195 (2) Notwithstanding subsection (1):

196 (b) The testamentary aspects of a revocable trust, executed
197 by a settlor who is a domiciliary of this state at the time of
198 execution, are invalid unless the trust instrument is executed
199 by the settlor with the formalities required for the execution
200 of a will under s. 732.502 or an electronic will under s.
201 732.523 which is self-proved; however, the qualified custodian
202 of the trust instrument may not also be a trustee of the trust
203 ~~in this state.~~ For purposes of this subsection, the term
204 “testamentary aspects” means those provisions of the trust
205 instrument that dispose of the trust property on or after the
206 death of the settlor other than to the settlor’s estate.

207 Section 16. Section 736.0404, Florida Statutes, is amended
208 to read:

209 736.0404 Trust purposes.—A trust may be created only to the
210 extent the purposes of the trust are lawful, not contrary to
211 public policy, and possible to achieve. ~~A trust and its terms~~
212 ~~must be for the benefit of its beneficiaries.~~

213 Section 17. Effective upon becoming a law, section
214 736.04117, Florida Statutes, is amended to read:



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215 736.04117 Trustee's power to invade principal in trust.-
216 (1) DEFINITIONS.-As used in this section, the term:
217 (a) "Absolute power" means ~~Unless the trust instrument~~
218 ~~expressly provides otherwise, a trustee who has absolute power~~
219 ~~under the terms of a trust to invade the principal of the trust,~~
220 ~~referred to in this section as the "first trust," to make~~
221 ~~distributions to or for the benefit of one or more persons may~~
222 ~~instead exercise the power by appointing all or part of the~~
223 ~~principal of the trust subject to the power in favor of a~~
224 ~~trustee of another trust, referred to in this section as the~~
225 ~~"second trust," for the current benefit of one or more of such~~
226 ~~persons under the same trust instrument or under a different~~
227 ~~trust instrument; provided:~~
228 1. ~~The beneficiaries of the second trust may include only~~
229 ~~beneficiaries of the first trust;~~
230 2. ~~The second trust may not reduce any fixed income,~~
231 ~~annuity, or unitrust interest in the assets of the first trust;~~
232 ~~and~~
233 3. ~~If any contribution to the first trust qualified for a~~
234 ~~marital or charitable deduction for federal income, gift, or~~
235 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
236 ~~amended, the second trust shall not contain any provision which,~~
237 ~~if included in the first trust, would have prevented the first~~
238 ~~trust from qualifying for such a deduction or would have reduced~~
239 ~~the amount of such deduction.~~
240 (b) ~~For purposes of this subsection, an absolute power to~~
241 ~~invade principal shall include a power to invade principal that~~
242 ~~is not limited to specific or ascertainable purposes, such as~~
243 ~~health, education, maintenance, and support, regardless of~~



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244 whether ~~or not~~ the term "absolute" is used. A power to invade
245 principal for purposes such as best interests, welfare, comfort,
246 or happiness constitutes ~~shall constitute~~ an absolute power not
247 limited to specific or ascertainable purposes.

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

251 (c) "Beneficiary with a disability" means a beneficiary of
252 the first trust who the authorized trustee believes may qualify
253 for governmental benefits based on disability, regardless of
254 whether the beneficiary currently receives those benefits or has
255 been adjudicated incapacitated.

256 (d) "Current beneficiary" means a beneficiary who, on the
257 date his or her qualification is determined, is a distributee or
258 permissible distributee of trust income or principal. The term
259 includes the holder of a presently exercisable general power of
260 appointment but does not include a person who is a beneficiary
261 only because he or she holds another power of appointment.

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

264 (f) "Internal Revenue Code" means the Internal Revenue Code
265 of 1986, as amended.

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

268 (h) "Presently exercisable general power of appointment"
269 means a power of appointment exercisable by the powerholder at
270 the relevant time. The term:

271 1. Includes a power of appointment that is exercisable only
272 after the occurrence of a specified event or that is subject to



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273 a specified restriction, but only after the event has occurred
274 or the restriction has been satisfied.

275 2. Does not include a power exercisable only upon the
276 powerholder's death.

277 (i) "Substantially similar" means that there is no material
278 change in a beneficiary's beneficial interests or in the power
279 to make distributions and that the power to make a distribution
280 under a second trust for the benefit of a beneficiary who is an
281 individual is substantially similar to the power under the first
282 trust to make a distribution directly to the beneficiary. A
283 distribution is deemed to be for the benefit of a beneficiary
284 if:

285 1. The distribution is applied for the benefit of a
286 beneficiary;

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

290 3. The distribution is made as permitted under the terms of
291 the first trust instrument and the second trust instrument for
292 the benefit of the beneficiary.

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

297 (k) "Vested interest" means a current unconditional right
298 to receive a mandatory distribution of income, a specified
299 dollar amount, or a percentage of value of a trust, or a current
300 unconditional right to withdraw income, a specified dollar
301 amount, or a percentage of value of a trust, which right is not



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302 subject to the occurrence of a specified event, the passage of a
303 specified time, or the exercise of discretion.

304 1. The term includes a presently exercisable general power
305 of appointment.

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

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

311 (a) Unless a trust instrument expressly provides otherwise,
312 an authorized trustee who has absolute power under the terms of
313 the trust to invade its principal, referred to in this section
314 as the "first trust," to make current distributions to or for
315 the benefit of one or more beneficiaries may instead exercise
316 such power by appointing all or part of the principal of the
317 trust subject to such power in favor of a trustee of one or more
318 other trusts, whether created under the same trust instrument as
319 the first trust or a different trust instrument, including a
320 trust instrument created for the purposes of exercising the
321 power granted by this section, each referred to in this section
322 as the "second trust," for the current benefit of one or more of
323 such beneficiaries only if:

324 1. The beneficiaries of the second trust include only
325 beneficiaries of the first trust; and

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

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

328 1. Retain a power of appointment granted in the first
329 trust;

330 2. Omit a power of appointment granted in the first trust,



331 other than a presently exercisable general power of appointment;

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

334 4. Create or modify a power of appointment if the
335 powerholder is a beneficiary of the first trust who is not a
336 current beneficiary, but the exercise of the power of
337 appointment may take effect only after the powerholder becomes,
338 or would have become if then living, a current beneficiary of
339 the first trust; and

340 5. Extend the term of the second trust beyond the term of
341 the first trust.

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

345 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
346 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
347 Unless the trust instrument expressly provides otherwise, an
348 authorized trustee who has a power, other than an absolute
349 power, under the terms of a first trust to invade principal to
350 make current distributions to or for the benefit of one or more
351 beneficiaries may instead exercise such power by appointing all
352 or part of the principal of the first trust subject to such
353 power in favor of a trustee of one or more second trusts. If the
354 authorized trustee exercises such power:

355 (a) The second trusts, in the aggregate, shall grant each
356 beneficiary of the first trust beneficial interests in the
357 second trusts which are substantially similar to the beneficial
358 interests of the beneficiary in the first trust.

359 (b) If the first trust grants a power of appointment to a



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360 beneficiary of the first trust, the second trust shall grant
361 such power of appointment in the second trust to such
362 beneficiary, and the class of permissible appointees shall be
363 the same as in the first trust.

364 (c) If the first trust does not grant a power of
365 appointment to a beneficiary of the first trust, then the second
366 trust may not grant a power of appointment in the second trust
367 to such beneficiary.

368 (d) Notwithstanding paragraphs (a), (b), and (c), the term
369 of the second trust may extend beyond the term of the first
370 trust, and, for any period after the first trust would have
371 otherwise terminated, in whole or in part, under the provisions
372 of the first trust, the trust instrument of the second trust
373 may, with respect to property subject to such extended term:

374 1. Include language providing the trustee with the absolute
375 power to invade the principal of the second trust during such
376 extended term; and

377 2. Create a power of appointment, if the powerholder is a
378 current beneficiary of the first trust, or expand the class of
379 permissible appointees in favor of which a power of appointment
380 may be exercised.

381 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
382 TRUST.—

383 (a) Notwithstanding subsections (2) and (3), unless the
384 trust instrument expressly provides otherwise, an authorized
385 trustee who has the power under the terms of a first trust to
386 invade the principal of the first trust to make current
387 distributions to or for the benefit of a beneficiary with a
388 disability may instead exercise such power by appointing all or



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389 part of the principal of the first trust in favor of a trustee
390 of a second trust that is a supplemental needs trust if:

391 1. The supplemental needs trust benefits the beneficiary
392 with a disability;

393 2. The beneficiaries of the second trust include only
394 beneficiaries of the first trust; and

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

397 (b) Except as affected by any change to the interests of
398 the beneficiary with a disability, the second trusts, in the
399 aggregate, shall grant each other beneficiary of the first trust
400 beneficial interests in the second trusts which are
401 substantially similar to such beneficiary's beneficial interests
402 in the first trust.

403 (5) PROHIBITED DISTRIBUTIONS.—

404 (a) An authorized trustee may not distribute the principal
405 of a trust under this section in a manner that would prevent a
406 contribution to that trust from qualifying for, or that would
407 reduce the exclusion, deduction, or other federal tax benefit
408 that was originally claimed or could have been claimed for, that
409 contribution, including:

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

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

414 3. A charitable deduction under s. 170(a), s. 642(c), s.
415 2055(a), or s. 2522(a) of the Internal Revenue Code;

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



418 5. Any other tax benefit for income, gift, estate, or
419 generation-skipping transfer tax purposes under the Internal
420 Revenue Code.

421 (b) If S corporation stock is held in the first trust, an
422 authorized trustee may not distribute all or part of that stock
423 to a second trust that is not a permitted shareholder under s.
424 1361(c) (2) of the Internal Revenue Code. If the first trust
425 holds stock in an S corporation and is, or but for provisions of
426 paragraphs (a), (c), and (d) would be, a qualified subchapter S
427 trust within the meaning of s. 1361(d) of the Internal Revenue
428 Code, the second trust instrument may not include or omit a term
429 that prevents it from qualifying as a qualified subchapter S
430 trust.

431 (c) Except as provided in paragraphs (a), (b), and (d), an
432 authorized trustee may distribute the principal of a first trust
433 to a second trust regardless of whether the settlor is treated
434 as the owner of either trust under ss. 671-679 of the Internal
435 Revenue Code; however, if the settlor is not treated as the
436 owner of the first trust, he or she may not be treated as the
437 owner of the second trust unless he or she at all times has the
438 power to cause the second trust to cease being treated as if it
439 were owned by the settlor.

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

446 (6) EXERCISE BY WRITING.—The exercise of a power to invade



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447 principal under subsection (2), subsection (3), or subsection
448 (4) must ~~The exercise of a power to invade principal under~~
449 ~~subsection (1) shall be by a written an instrument in writing,~~
450 signed and acknowledged by the authorized trustee, and filed
451 with the records of the first trust.

452 (7) ~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
453 power to invade principal under subsection (2), subsection (3),
454 or subsection (4):

455 (a) Is ~~(1)~~ shall be considered the exercise of a power of
456 appointment, excluding other than a power to appoint to the
457 authorized trustee, the authorized trustee's creditors, the
458 authorized trustee's estate, or the creditors of the authorized
459 trustee's estate.

460 (b) Is, ~~and Shall be~~ subject to the provisions of s.
461 689.225 covering the time at which the permissible period of the
462 rule against perpetuities begins and the law that determines the
463 permissible period of the rule against perpetuities of the first
464 trust.

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

467 (d) May not:

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

470 2. Relieve the authorized trustee from liability for breach
471 of trust or provide for indemnification of the authorized
472 trustee for any liability or claim to a greater extent than the
473 first trust instrument; however, the exercise of the power may
474 divide and reallocate fiduciary powers among fiduciaries and
475 relieve a fiduciary from liability for an act or failure to act



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476 of another fiduciary as otherwise allowed under law or common
477 law.

478 (8) NOTICE.—

479 (a)(4) The authorized trustee shall provide written
480 notification of the manner in which he or she intends to
481 exercise his or her power to invade principal to notify all
482 qualified beneficiaries of the following parties first trust, in
483 writing, at least 60 days before prior to the effective date of
484 the authorized trustee's exercise of such power the trustee's
485 power to invade principal pursuant to subsection (2), subsection
486 (3), or subsection (4): (1), of the manner in which the trustee
487 intends to exercise the power.

488 1. All qualified beneficiaries of the first trust;

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

491 3. All trustees of the first trust; and

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

494 (b) The authorized A copy of the proposed instrument
495 exercising the power shall satisfy the trustee's notice
496 obligation to provide notice under this subsection is satisfied
497 when he or she provides copies of the proposed instrument
498 exercising the power, the trust instrument of the first trust,
499 and the proposed trust instrument of the second trust.

500 (c) If all of those required to be notified qualified
501 beneficiaries waive the notice period by signed written
502 instrument delivered to the authorized trustee, the authorized
503 trustee's power to invade principal shall be exercisable
504 immediately.



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505 (d) The authorized trustee's notice under this subsection
506 does shall not limit the right of any beneficiary to object to
507 the exercise of the authorized trustee's power to invade
508 principal except as otherwise provided in other applicable
509 provisions of this code.

510 (9) ~~(5)~~ INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
511 PROHIBITION.—The exercise of the power to invade principal under
512 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
513 prohibited by a spendthrift clause or by a provision in the
514 trust instrument that prohibits amendment or revocation of the
515 trust.

516 (10) ~~(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
517 intended to create or imply a duty to exercise a power to invade
518 principal, and no inference of impropriety may shall be made as
519 a result of an authorized trustee's failure to exercise a
520 ~~trustee not exercising~~ the power to invade principal conferred
521 under subsections (2), (3), and (4) ~~subsection (1)~~.

522 (11) ~~(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The provisions~~
523 ~~of~~ This section may shall not be construed to abridge the right
524 of any trustee who has a power of invasion to appoint property
525 in further trust that arises under the terms of the first trust
526 or under any other section of this code or under another
527 provision of law or under common law.

528 Section 18. Subsection (1) of section 736.0708, Florida
529 Statutes, is amended to read:

530 736.0708 Compensation of trustee.—

531 (1) If the terms of a trust do not specify a the trustee's
532 compensation, the a trustee, including each cotrustee, is
533 entitled to compensation that is reasonable under the



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534 circumstances. In the aggregate, the reasonable compensation for
535 multiple trustees may be greater than for a single trustee.

536 Section 19. Subsection (3) of section 736.08135, Florida
537 Statutes, is amended to read:

538 736.08135 Trust accountings.—

539 (3) Subsections (1) and (2) govern the form and content of
540 ~~This section applies to~~ all trust accountings rendered for any
541 accounting periods beginning on or after January 1, 2003, and
542 all trust accountings rendered on or after July 1, 2017. This
543 subsection does not affect the beginning period from which a
544 trustee is required to render a trust accounting.

545 Section 20. Subsection (3) of section 736.1008, Florida
546 Statutes, is amended to read:

547 736.1008 Limitations on proceedings against trustees.—

548 (3) When a trustee has not issued a final trust accounting
549 or has not given written notice to the beneficiary of the
550 availability of the trust records for examination and that
551 claims with respect to matters not adequately disclosed may be
552 barred, a claim against the trustee for breach of trust based on
553 a matter not adequately disclosed in a trust disclosure document
554 is barred as provided in chapter 95 and accrues when the
555 beneficiary has actual knowledge of:

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

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

560

561 Paragraph (a) applies to claims based upon acts or omissions
562 occurring on or after July 1, 2008. A beneficiary's actual



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563 knowledge that he or she has not received a trust accounting
564 does not cause a claim to accrue against the trustee for breach
565 of trust based upon the failure to provide a trust accounting
566 required by s. 736.0813 or former s. 737.303 and does not
567 commence the running of any period of limitations or laches for
568 such a claim, and paragraph (a) and chapter 95 do not bar any
569 such claim.

570 Section 21. The changes to ss. 736.08135 and 736.1008,
571 Florida Statutes, made by this act are intended to clarify
572 existing law, are remedial in nature, and apply retroactively to
573 all cases pending or commenced on or after July 1, 2017.

574 Section 22. Present subsections (2), (3), and (4) of
575 section 736.1201, Florida Statutes, are redesignated as
576 subsections (3), (4), and (5), respectively, present subsection
577 (5) of that section is amended, and a new subsection (2) is
578 added to that section, to read:

579 736.1201 Definitions.—As used in this part:

580 (2) "Delivery of notice" means delivery of a written notice
581 required under this part using any commercial delivery service
582 requiring a signed receipt or by any form of mail requiring a
583 signed receipt.

584 ~~(5) "State attorney" means the state attorney for the~~
585 ~~judicial circuit of the principal place of administration of the~~
586 ~~trust pursuant to s. 736.0108.~~

587 Section 23. Section 736.1205, Florida Statutes, is amended
588 to read:

589 736.1205 Notice that this part does not apply.—In the case
590 of a power to make distributions, if the trustee determines that
591 the governing instrument contains provisions that are more



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592 restrictive than s. 736.1204(2), or if the trust contains other
593 powers, inconsistent with the provisions of s. 736.1204(3) that
594 specifically direct acts by the trustee, the trustee shall
595 notify the ~~state~~ Attorney General by delivery of notice when the
596 trust becomes subject to this part. Section 736.1204 does not
597 apply to any trust for which notice has been given pursuant to
598 this section unless the trust is amended to comply with the
599 terms of this part.

600 Section 24. Sections 1 through 10 and section 15 of this
601 act apply to electronic wills executed on or after July 1, 2017.

602 Section 25. Subsection (2) of section 736.1206, Florida
603 Statutes, is amended to read:

604 736.1206 Power to amend trust instrument.—

605 (2) In the case of a charitable trust that is not subject
606 to ~~the provisions of~~ subsection (1), the trustee may amend the
607 governing instrument to comply with ~~the provisions of~~ s.
608 736.1204(2) after delivery of notice to, and with the consent
609 of, the ~~state~~ Attorney General.

610 Section 26. Section 736.1207, Florida Statutes, is amended
611 to read:

612 736.1207 Power of court to permit deviation.—This part does
613 not affect the power of a court to relieve a trustee from any
614 restrictions on the powers and duties that are placed on the
615 trustee by the governing instrument or applicable law for cause
616 shown and on complaint of the trustee, the ~~state~~ Attorney
617 General, or an affected beneficiary and notice to the affected
618 parties.

619 Section 27. Paragraph (b) of subsection (4) of section
620 736.1208, Florida Statutes, is amended to read:



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621 736.1208 Release; property and persons affected; manner of
622 effecting.—

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

624 (b) If the release is accomplished by reducing the class of
625 permissible charitable organizations, by delivery of notice a
626 ~~copy~~ of the release to the ~~state~~ Attorney General, including a
627 copy of the release.

628 Section 28. Section 736.1209, Florida Statutes, is amended
629 to read:

630 736.1209 Election to come under this part.—With the consent
631 of that organization or organizations, a trustee of a trust for
632 the benefit of a public charitable organization or organizations
633 may come under s. 736.1208(5) by delivery of notice to filing
634 ~~with the state~~ Attorney General of the an election, accompanied
635 by the proof of required consent. Thereafter the trust shall be
636 subject to s. 736.1208(5).

637 Section 29. Except as otherwise provided in this act and
638 except for this section, which shall take effect upon becoming a
639 law, this act shall take effect July 1, 2017.

640
641 ===== T I T L E A M E N D M E N T =====

642 And the title is amended as follows:

643 Delete lines 2 - 66

644 and insert:

645 An act relating to wills and trusts; amending s.
646 731.201, F.S.; revising the definition of the term
647 “will” to include electronic wills; amending s.
648 732.506, F.S.; excluding electronic wills from
649 specified methods to revoke a will; creating s.



650 732.521, F.S.; providing a short title; creating s.
651 732.522, F.S.; defining terms; creating s. 732.523,
652 F.S.; specifying requirements that must be satisfied
653 in the execution of electronic wills; creating s.
654 732.524, F.S.; providing requirements for self-proof
655 of electronic wills; creating s. 732.525, F.S.;
656 specifying the circumstances under which a person is
657 deemed to be in the presence of or appearing before
658 another person; providing that an electronic record
659 satisfies the requirement that a record be in writing;
660 providing that an electronic signature satisfies the
661 requirement that a document be signed; providing
662 requirements for certain documents to be deemed
663 executed in this state; creating s. 732.526, F.S.;
664 authorizing an electronic will of a nonresident of
665 this state which is properly executed in this or
666 another state to be offered for and admitted to
667 probate in this state; providing the venue for the
668 probate of such electronic will; creating s. 732.527,
669 F.S.; specifying requirements for service as a
670 qualified custodian; requiring qualified custodians to
671 provide access to or information concerning the
672 electronic will, or the electronic record containing
673 the electronic will, only to specified persons or as
674 directed by a court; authorizing a qualified custodian
675 to destroy the electronic record of an electronic will
676 after a certain date; providing conditions under which
677 a qualified custodian may cease serving as a qualified
678 custodian; requiring a qualified custodian to cease



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679 serving in such capacity upon the written request of
680 the testator; requiring that a successor qualified
681 custodian agree in writing to serve in that capacity
682 for an electronic will before succeeding to office;
683 specifying what constitutes an affidavit of a
684 qualified custodian; requiring a qualified custodian
685 to deliver certain documents upon request from the
686 testator; prohibiting a qualified custodian from
687 charging the testator a fee for such documents under
688 certain circumstances; providing that a qualified
689 custodian is liable for certain damages under certain
690 circumstances; prohibiting a qualified custodian from
691 terminating or suspending access to, or downloads of,
692 an electronic will by the testator; requiring a
693 qualified custodian to deposit an electronic will with
694 the court upon receiving information that the testator
695 is dead; prohibiting a qualified custodian from
696 charging a fee for certain actions taken upon the
697 death of the testator; requiring a qualified custodian
698 to keep certain information confidential; amending s.
699 733.201, F.S.; providing for the proof of electronic
700 wills; providing requirements for admitting an
701 electronic will that is not self-proved into probate;
702 providing that a paper copy of an electronic will
703 constitutes an "original" of the electronic will
704 subject to certain conditions; amending s. 736.0103,
705 F.S.; redefining the term "interests of the
706 beneficiaries"; amending s. 736.0105, F.S.; deleting a
707 requirement that a trust be for the benefit of the



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708 trust's beneficiaries; amending s. 736.0109, F.S.;

709 revising provisions relating to notice or sending of

710 electronic trust documents; providing requirements for

711 such documents to be deemed sent; requiring a certain

712 authorization to specify documents subject to

713 electronic posting; revising requirements for a

714 recipient to electronically access such documents;

715 prohibiting the termination of a recipient's

716 electronic access to such documents from invalidating

717 certain notice or sending of electronic trust

718 documents; tolling specified limitations periods under

719 certain circumstances; providing requirements for

720 electronic access to such documents to be deemed

721 terminated by a sender; providing applicability;

722 amending s. 736.0110, F.S.; providing that the

723 Attorney General has standing to assert certain rights

724 in certain proceedings; amending s. 736.0403, F.S.;

725 providing that, for purposes of establishing the

726 validity of the testamentary aspects of a revocable

727 trust, the qualified custodian of the trust instrument

728 may not also be a trustee of the trust; amending s.

729 736.0404, F.S.; deleting a restriction on the purpose

730 for which a trust is created; amending s. 736.04117,

731 F.S.; defining and redefining terms; authorizing an

732 authorized trustee to appoint all or part of the

733 principal of a trust to a second trust under certain

734 circumstances; providing requirements for the second

735 trust and its beneficiaries; providing that the second

736 trust may retain, omit, or create specified powers;



737 authorizing the term of the second trust to extend
738 beyond the term of the first trust; providing
739 requirements for distributions to a second trust when
740 the authorized trustee does not have absolute power;
741 providing requirements for such second trust;
742 providing requirements for grants of power by the
743 second trust; authorizing a second trust created by an
744 authorized trustee without absolute power to grant
745 absolute power to the second trust's trustee;
746 authorizing an authorized trustee to appoint the
747 principal of a first trust to a supplemental needs
748 trust under certain circumstances; providing
749 requirements for such supplemental needs trust;
750 prohibiting an authorized trustee from distributing
751 the principal of a trust in a manner that would reduce
752 specified tax benefits; prohibiting the distribution
753 of S corporation stock from a first trust to a second
754 trust under certain circumstances; prohibiting a
755 settlor from being treated as the owner of a second
756 trust if he or she was not treated as the owner of the
757 first trust; prohibiting an authorized trustee from
758 distributing a trust's interest in property to a
759 second trust if it is subject to specified rules of
760 the Internal Revenue Code; prohibiting the exercise of
761 power to invade a trust's principal to increase an
762 authorized trustee's compensation or relieve him or
763 her from certain liability; specifying who an
764 authorized trustee must notify when he or she
765 exercises his or her power to invade the trust's



766 principal; specifying the documents that the
767 authorized trustee must provide with such notice;
768 amending s. 736.0708, F.S.; providing that a cotrustee
769 is entitled to reasonable compensation when the trust
770 does not specify compensation; providing that
771 reasonable compensation may be greater for multiple
772 trustees than for a single trustee; amending s.
773 736.08135, F.S.; revising applicability; amending s.
774 736.1008, F.S.; clarifying that certain knowledge by a
775 beneficiary does not cause a claim to accrue for
776 breach of trust or commence the running of a period of
777 limitations or laches; providing legislative intent;
778 providing for retroactive application; amending s.
779 736.1201, F.S.; defining the term "delivery of
780 notice"; conforming a provision to changes made by the
781 act; amending s. 736.1205, F.S.; requiring an
782 authorized trustee to provide certain notice to the
783 Attorney General rather than the state attorney;
784 providing applicability; amending ss. 736.1206,
785 736.1207, 736.1208, and 736.1209, F.S.; conforming
786 provisions to changes made by the act; providing
787 effective dates.