

1                   A bill to be entitled  
2           An act relating to trusts; amending s. 736.0103, F.S.;  
3           revising the definition of the term "interests of the  
4           beneficiaries"; amending s. 736.0105, F.S.; deleting a  
5           requirement that a trust be for the benefit of the  
6           trust's beneficiaries; amending s. 736.0109, F.S.;  
7           revising provisions relating to notice or sending of  
8           electronic trust documents; providing requirements for  
9           such 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; tolling specified  
16          limitations periods under certain circumstances;  
17          providing requirements for electronic access to such  
18          documents to be deemed terminated by a sender;  
19          providing applicability; amending s. 736.0110, F.S.;  
20          providing that the Attorney General has standing to  
21          assert certain rights in certain proceedings; amending  
22          s. 736.0404, F.S.; deleting a restriction on the  
23          purpose for which a trust is created; amending s.  
24          736.04117, F.S.; providing and revising definitions;  
25          authorizing an authorized trustee to appoint all or

26 part of the principal of a trust to a second trust  
27 under certain circumstances; providing requirements  
28 for the second trust and its beneficiaries; providing  
29 that the second trust may retain, omit, or create  
30 specified powers; authorizing the term of the second  
31 trust to extend beyond the term of the first trust;  
32 providing requirements for distributions to a second  
33 trust when the authorized trustee does not have  
34 absolute power; providing requirements for such second  
35 trust; providing requirements for grants of power by  
36 the second trust; authorizing a second trust created  
37 by an authorized trustee without absolute power to  
38 grant absolute power to the second trust's trustee;  
39 authorizing an authorized trustee to appoint the  
40 principal of a first trust to a supplemental needs  
41 trust under certain circumstances; providing  
42 requirements for such supplemental needs trust;  
43 prohibiting an authorized trustee from distributing  
44 the principal of a trust in a manner that would reduce  
45 specified tax benefits; prohibiting the distribution  
46 of S corporation stock from a first trust to a second  
47 trust under certain circumstances; prohibiting a  
48 settlor to be treated as the owner of a second trust  
49 if he or she was not treated as the owner of the first  
50 trust; prohibiting an authorized trustee from

51 distributing a trust's interest in property to a  
52 second trust if it is subject to specified rules of  
53 the Internal Revenue Code; prohibiting the exercise of  
54 power to invade a trust's principal to increase an  
55 authorized trustee's compensation or relieve him or  
56 her from certain liability; specifying who an  
57 authorized trustee must notify when he or she  
58 exercises his or her power to invade the trust's  
59 principal; specifying the documents that the  
60 authorized trustee must provide with such notice;  
61 amending s. 736.08135, F.S.; revising applicability;  
62 amending s. 736.1008, F.S.; clarifying that certain  
63 knowledge by a beneficiary does not cause a claim for  
64 breach of trust or commence the running of a period of  
65 limitations or laches; providing intent; providing for  
66 retroactive application; amending s. 736.1201, F.S.;  
67 defining the term "delivery of notice"; conforming a  
68 provision to changes made by the act; amending s.  
69 736.1205, F.S.; requiring an authorized trustee to  
70 provide certain notice to the Attorney General rather  
71 than the state attorney; amending ss. 736.1206,  
72 736.1207, 736.1208, and 736.1209, F.S.; conforming  
73 provisions; providing an effective date.

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

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Section 1. 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.

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

736.0105 Default and mandatory rules.—

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

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

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

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail,

101 personal delivery, delivery to the person's last known place of  
102 residence or place of business, ~~or~~ a properly directed facsimile  
103 or other electronic message, or posting to a secure electronic  
104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting to an  
106 electronic account or website is not deemed sent for purposes of  
107 this section unless the sender complies with this subsection.  
108 The sender has the burden of proving compliance with this  
109 subsection ~~In addition to the methods listed in subsection (1)~~  
110 ~~for sending a document, a sender may post a document to a secure~~  
111 ~~electronic account or website where the document can be~~  
112 ~~accessed.~~

113 (a) ~~Before a document may be posted to an electronic~~  
114 ~~account or website,~~ The recipient must sign a separate written  
115 authorization solely for the purpose of authorizing the sender  
116 to post documents on an electronic account or website before  
117 such posting. The written authorization must:

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

123 2. Contain specific instructions for accessing the  
124 electronic account or website, including the security procedures  
125 required to access the electronic account or website, such as a

126 | username and password.

127 |       3. Advise the recipient that a separate notice will be  
128 | sent when a document is posted to the electronic account or  
129 | website and the manner in which the separate notice will be  
130 | sent.

131 |       4. Advise the recipient that the authorization to receive  
132 | documents by electronic posting may be amended or revoked at any  
133 | time and include specific instructions for revoking or amending  
134 | the authorization, including the address designated for the  
135 | purpose of receiving notice of the revocation or amendment.

136 |       5. Advise the recipient that posting a document on the  
137 | electronic account or website may commence a limitations period  
138 | as short as 6 months even if the recipient never actually  
139 | accesses the electronic account, electronic website, or ~~the~~  
140 | document.

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

151 (c) A document sent by electronic posting is deemed  
152 received by the recipient on the earlier of the date on which  
153 ~~that~~ the separate notice is received or the date on which ~~that~~  
154 the recipient accesses the document on the electronic account or  
155 website.

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

170 (e) The notice required in paragraph (d) may be in  
171 substantially the following form: "You have authorized the  
172 receipt of documents through posting to an electronic account or  
173 website on which ~~where~~ the documents can be accessed. This  
174 notice is being sent to advise you that a limitations period,  
175 which may be as short as 6 months, may be running as to matters

176 disclosed in a trust accounting or other written report of a  
 177 trustee posted to the electronic account or website even if you  
 178 never actually access the electronic account or website or the  
 179 documents. You may amend or revoke the authorization to receive  
 180 documents by electronic posting at any time. If you have any  
 181 questions, please consult your attorney."

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

189 (g) If a document is provided to a recipient solely  
 190 through electronic posting and is deemed sent for purposes of  
 191 this section:

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

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

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

200 2. If the recipient's access to the electronic account or

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

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

216 a. From the date on which the recipient's access to the  
217 electronic account or website is terminated by the sender until  
218 45 days after the date on which the sender provides notification  
219 of such termination to the recipient by means other than  
220 electronic posting, and:

221 (I) The recipient 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 (II) The recipient's access to the electronic account or  
225 website is restored; or

226 b. From the date on which any request is made under sub-  
227 sub-paragraph 3.a.(I) until 20 days after the date on which  
228 the requested documents are provided to the recipient by means  
229 other than electronic posting.

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

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

248 (j) This subsection governs the posting of a document  
249 solely for the purpose of giving notice under this code or the  
250 sending of a document to a person under this code and does not

251 prohibit or otherwise apply to the posting of a document to an  
252 electronic account or website for any other purpose or preclude  
253 the sending of a document by any other means.

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

256 736.0110 Others treated as qualified beneficiaries.—

257 (3) The Attorney General may assert the rights of a  
258 qualified beneficiary with respect to a charitable trust having  
259 its principal place of administration in this state. The  
260 Attorney General has standing to assert such rights in any  
261 judicial proceedings.

262 Section 5. Section 736.0404, Florida Statutes, is amended  
263 to read:

264 736.0404 Trust purposes.—A trust may be created only to  
265 the extent the purposes of the trust are lawful, not contrary to  
266 public policy, and possible to achieve. ~~A trust and its terms~~  
267 ~~must be for the benefit of its beneficiaries.~~

268 Section 6. Effective upon this act becoming a law, section  
269 736.04117, Florida Statutes, is amended to read:

270 736.04117 Trustee's power to invade principal in trust.—

271 (1) ~~(a)~~ DEFINITIONS.—As used in this section, the term:  
272 ~~Unless the trust instrument expressly provides otherwise, a~~  
273 ~~trustee who has absolute power under the terms of a trust to~~  
274 ~~invade the principal of the trust, referred to in this section~~  
275 ~~as the "first trust," to make distributions to or for the~~

276 ~~benefit of one or more persons may instead exercise the power by~~  
277 ~~appointing all or part of the principal of the trust subject to~~  
278 ~~the power in favor of a trustee of another trust, referred to in~~  
279 ~~this section as the "second trust," for the current benefit of~~  
280 ~~one or more of such persons under the same trust instrument or~~  
281 ~~under a different trust instrument; provided:~~

282 ~~1. The beneficiaries of the second trust may include only~~  
283 ~~beneficiaries of the first trust;~~

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

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

294 ~~(b) For purposes of this subsection, an absolute power to~~  
295 ~~invade principal shall include~~

296 ~~(a) "Absolute power" means a power to invade principal~~  
297 ~~that is not limited to specific or ascertainable purposes, such~~  
298 ~~as health, education, maintenance, and support, regardless of~~  
299 ~~whether ~~or not~~ the term "absolute" is used. A power to invade~~  
300 ~~principal for purposes such as best interests, welfare, comfort,~~

301 or happiness constitutes ~~shall constitute~~ an absolute power not  
302 limited to specific or ascertainable purposes.

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

306 (c) "Beneficiary with a disability" means a beneficiary of  
307 the first trust who the authorized trustee believes may qualify  
308 for government benefits based on disability, regardless of  
309 whether the beneficiary currently receives those benefits or has  
310 been adjudicated incapacitated.

311 (d) "Current beneficiary" means a beneficiary who, on the  
312 date his or her qualification is determined, is a distributee or  
313 permissible distributee of trust income or principal. The term  
314 includes the holder of a presently exercisable general power of  
315 appointment, but does not include a person who is a beneficiary  
316 only because he or she holds another power of appointment.

317 (e) "Government benefits" means financial aid or services  
318 from any state, federal, or other public agency.

319 (f) "Internal Revenue Code" means the Internal Revenue  
320 Code of 1986, as amended.

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

323 (h) "Presently exercisable general power of appointment"  
324 means a power of appointment exercisable by the powerholder at  
325 the relevant time. The term:

326 1. Includes a power of appointment that is exercisable  
 327 only after the occurrence of a specified event or that is  
 328 subject to a specified restriction, but only after the event has  
 329 occurred or the restriction has been satisfied.

330 2. Does not include a power exercisable only upon the  
 331 powerholder's death.

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

340 1. The distribution is applied for the benefit of a  
 341 beneficiary;

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

345 3. The distribution is made as permitted under the terms  
 346 of the first trust instrument and the second trust instrument  
 347 for the benefit of the beneficiary.

348 (j) "Supplemental needs trust" means a trust that the  
 349 authorized trustee believes would not be considered a resource  
 350 for purposes of determining whether the beneficiary who has a

351 disability is eligible for government benefits.

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

359 1. The term includes a presently exercisable general power  
360 of appointment.

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

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

366 (a) Unless a trust instrument expressly provides  
367 otherwise, an authorized trustee who has absolute power under  
368 the terms of the trust to invade its principal, referred to in  
369 this section as the "first trust," to make current distributions  
370 to or for the benefit of one or more beneficiaries, may instead  
371 exercise such power by appointing all or part of the principal  
372 of the trust subject to such power in favor of a trustee of one  
373 or more other trusts, whether created under the same trust  
374 instrument as the first trust or a different trust instrument,  
375 including a trust instrument created for the purposes of

376 exercising the power granted by this section, each referred to  
377 in this section as the "second trust," for the current benefit  
378 of one or more of such beneficiaries only if:

379 1. The beneficiaries of the second trust include only  
380 beneficiaries of the first trust.

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

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

384 1. Retain a power of appointment granted in the first  
385 trust.

386 2. Omit a power of appointment granted in the first trust,  
387 other than a presently exercisable general power of appointment.

388 3. Create or modify a power of appointment if the  
389 powerholder is a current beneficiary of the first trust.

390 4. Create or modify a power of appointment if the  
391 powerholder is a beneficiary of the first trust who is not a  
392 current beneficiary, but the exercise of the power of  
393 appointment may take effect only after the powerholder becomes,  
394 or would have become if then living, a current beneficiary of  
395 the first trust.

396 5. Extend the term of the second trust beyond the term of  
397 the first trust.

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

401       (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN  
402 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—  
403 Unless the trust instrument expressly provides otherwise, an  
404 authorized trustee who has a power, other than an absolute  
405 power, under the terms of a first trust to invade principal to  
406 make current distributions to or for the benefit of one or more  
407 beneficiaries may instead exercise such power by appointing all  
408 or part of the principal of the first trust subject to such  
409 power in favor of a trustee of one or more second trusts. If the  
410 authorized trustee exercises such power:

411       (a) The second trusts, in the aggregate, shall grant each  
412 beneficiary of the first trust beneficial interests in the  
413 second trusts which are substantially similar to the beneficial  
414 interests of the beneficiary in the first trust.

415       (b) If the first trust grants a power of appointment to a  
416 beneficiary of the first trust, the second trust shall grant  
417 such power of appointment in the second trust to such  
418 beneficiary and the class of permissible appointees shall be the  
419 same as in the first trust.

420       (c) If the first trust does not grant a power of  
421 appointment to a beneficiary of the first trust, then the second  
422 trust may not grant a power of appointment in the second trust  
423 to such beneficiary.

424       (d) Notwithstanding paragraphs (a), (b), and (c), the term  
425 of the second trust may extend beyond the term of the first

426 trust, and, for any period after the first trust would have  
427 otherwise terminated, in whole or in part, under the provisions  
428 of the first trust, the trust instrument of the second trust  
429 may, with respect to property subject to such extended term:

430 1. Include language providing the trustee with the  
431 absolute power to invade the principal of the second trust  
432 during such extended term.

433 2. Create a power of appointment, if the powerholder is a  
434 current beneficiary of the first trust, or expand the class of  
435 permissible appointees in favor of which a power of appointment  
436 may be exercised.

437 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS  
438 TRUST.—

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

447 1. The supplemental needs trust benefits the beneficiary  
448 with a disability.

449 2. The beneficiaries of the second trust include only  
450 beneficiaries of the first trust.

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

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

459 (5) PROHIBITED DISTRIBUTIONS.—

460 (a) An authorized trustee may not distribute the principal  
461 of a trust under this section in a manner that would prevent a  
462 contribution to that trust from qualifying for, or that would  
463 reduce the exclusion, deduction, or other federal tax benefit  
464 that was originally claimed or could have been claimed for, that  
465 contribution, including:

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

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

470 3. A charitable deduction under s. 170(a), s. 642(c), s.  
471 2055(a), or s. 2522(a) of the Internal Revenue Code;

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

474 5. Any other tax benefit for income, gift, estate, or  
475 generation-skipping transfer tax purposes under the Internal

476 Revenue Code.

477 (b) If S corporation stock is held in the first trust, an  
478 authorized trustee may not distribute all or part of that stock  
479 to a second trust that is not a permitted shareholder under s.  
480 1361(c)(2) of the Internal Revenue Code. If the first trust  
481 holds stock in an S corporation and is, or but for provisions of  
482 paragraphs (a), (c), and (d) would be, a qualified subchapter S  
483 trust within the meaning of s. 1361(d) of the Internal Revenue  
484 Code, the second trust instrument may not include or omit a term  
485 that prevents it from qualifying as a qualified subchapter S  
486 trust.

487 (c) Except as provided in paragraphs (a), (b), and (d), an  
488 authorized trustee may distribute the principal of a first trust  
489 to a second trust regardless of whether the settlor is treated  
490 as the owner of either trust under ss. 671-679 of the Internal  
491 Revenue Code; however, if the settlor is not treated as the  
492 owner of the first trust, he or she may not be treated as the  
493 owner of the second trust unless he or she at all times has the  
494 power to cause the second trust to cease being treated as if it  
495 was owned by the settlor.

496 (d) If an interest in property which is subject to the  
497 minimum distribution rules of s. 401(a)(9) of the Internal  
498 Revenue Code is held in trust, an authorized trustee may not  
499 distribute such an interest to a second trust under subsection  
500 (2), subsection (3), or subsection (4) if the distribution would

501 shorten the otherwise applicable maximum distribution period.

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

508 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of  
 509 a power to invade principal under subsection (2), subsection  
 510 (3), or subsection (4):

511 (a) Is ~~(1) shall be~~ considered the exercise of a power of  
 512 appointment, excluding other than a power to appoint to the  
 513 authorized trustee, the authorized trustee's creditors, the  
 514 authorized trustee's estate, or the creditors of the authorized  
 515 trustee's estate.

516 (b) Is, ~~and shall be~~ subject to the provisions of s.  
 517 689.225 covering the time at which the permissible period of the  
 518 rule against perpetuities begins and the law that determines the  
 519 permissible period of the rule against perpetuities of the first  
 520 trust.

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

523 (d) May not:

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

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

534 (8) NOTICE.—

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

544 1. All qualified beneficiaries of the first trust.

545 2. If paragraph (5)(c) applies, the settlor of the first  
546 trust.

547 3. All trustees of the first trust.

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

550 (b) The authorized A copy of the proposed instrument

551 ~~exercising the power shall satisfy the trustee's notice~~  
552 obligation to provide notice under this subsection is satisfied  
553 by his or her providing copies of the proposed instrument  
554 exercising the power, the trust instrument of the first trust,  
555 and the proposed trust instrument of the second trust.

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

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

566 (9)-(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER  
567 PROHIBITION.—The exercise of the power to invade principal under  
568 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not  
569 prohibited by a spendthrift clause or by a provision in the  
570 trust instrument that prohibits amendment or revocation of the  
571 trust.

572 (10)-(6) NO DUTY TO EXERCISE.—Nothing in this section is  
573 intended to create or imply a duty to exercise a power to invade  
574 principal, and no inference of impropriety may ~~shall~~ be made as  
575 a result of an authorized trustee's failure to exercise a

576 ~~trustee not exercising~~ the power to invade principal conferred  
577 under subsections (2), (3), and (4) ~~subsection (1)~~.

578 ~~(11)-(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS. ~~The~~  
579 ~~provisions of~~ This section may ~~shall~~ not be construed to abridge  
580 the right of any trustee who has a power of invasion to appoint  
581 property in further trust that arises under the terms of the  
582 first trust or under any other section of this code or under  
583 another provision of law or under common law.

584 Section 7. Subsection (3) of section 736.08135, Florida  
585 Statutes, is amended to read:

586 736.08135 Trust accountings.—

587 (3) Subsections (1) and (2) govern the form and content of  
588 ~~This section applies to~~ all trust accountings rendered for any  
589 accounting periods beginning on or after January 1, 2003, and  
590 all trust accountings rendered on or after July 1, 2017. This  
591 subsection does not affect the beginning period from which a  
592 trustee is required to render a trust accounting.

593 Section 8. Subsection (3) of section 736.1008, Florida  
594 Statutes, is amended to read:

595 736.1008 Limitations on proceedings against trustees.—

596 (3) When a trustee has not issued a final trust accounting  
597 or has not given written notice to the beneficiary of the  
598 availability of the trust records for examination and that  
599 claims with respect to matters not adequately disclosed may be  
600 barred, a claim against the trustee for breach of trust based on

601 a matter not adequately disclosed in a trust disclosure document  
602 is barred as provided in chapter 95 and accrues when the  
603 beneficiary has actual knowledge of:

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

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

609

610 Paragraph (a) applies to claims based upon acts or omissions  
611 occurring on or after July 1, 2008. A beneficiary's actual  
612 knowledge that he or she has not received a trust accounting  
613 does not cause a claim to accrue against the trustee for breach  
614 of trust based upon the failure to provide a trust accounting  
615 required by s. 736.0813 or former s. 737.303, and does not  
616 commence the running of any period of limitations or laches for  
617 such a claim, and paragraph (a) and chapter 95 do not bar any  
618 such claim.

619 Section 9. The changes to ss. 736.08135 and 736.1008,  
620 Florida Statutes, made by this act are intended to clarify  
621 existing law, are remedial in nature, and apply retroactively to  
622 all cases pending or commenced on or after July 1, 2017.

623 Section 10. Subsections (2), (3), and (4) of section  
624 736.1201, Florida Statutes, are renumbered as subsections (3),  
625 (4), and (5), respectively, present subsection (5) of that

626 section is amended, and a new subsection (2) is added to that  
627 section, to read:

628 736.1201 Definitions.—As used in this part:

629 (2) "Delivery of notice" means delivery of a written  
630 notice required under this part using any commercial delivery  
631 service requiring a signed receipt or by any form of mail  
632 requiring a signed receipt.

633 ~~(5) "State attorney" means the state attorney for the~~  
634 ~~judicial circuit of the principal place of administration of the~~  
635 ~~trust pursuant to s. 736.0108.~~

636 Section 11. Section 736.1205, Florida Statutes, is amended  
637 to read:

638 736.1205 Notice that this part does not apply.—In the case  
639 of a power to make distributions, if the trustee determines that  
640 the governing instrument contains provisions that are more  
641 restrictive than s. 736.1204(2), or if the trust contains other  
642 powers, inconsistent with the provisions of s. 736.1204(3) that  
643 specifically direct acts by the trustee, the trustee shall  
644 notify the ~~state~~ Attorney General by delivery of notice when the  
645 trust becomes subject to this part. Section 736.1204 does not  
646 apply to any trust for which notice has been given pursuant to  
647 this section unless the trust is amended to comply with the  
648 terms of this part.

649 Section 12. Subsection (2) of section 736.1206, Florida  
650 Statutes, is amended to read:

651 736.1206 Power to amend trust instrument.—

652 (2) In the case of a charitable trust that is not subject  
 653 to ~~the provisions of~~ subsection (1), the trustee may amend the  
 654 governing instrument to comply with ~~the provisions of~~ s.  
 655 736.1204(2) after delivery of notice to, and with the consent  
 656 of, ~~the state~~ Attorney General.

657 Section 13. Section 736.1207, Florida Statutes, is amended  
 658 to read:

659 736.1207 Power of court to permit deviation.—This part  
 660 does not affect the power of a court to relieve a trustee from  
 661 any restrictions on the powers and duties that are placed on the  
 662 trustee by the governing instrument or applicable law for cause  
 663 shown and on complaint of the trustee, the Attorney General  
 664 ~~state attorney~~, or an affected beneficiary and notice to the  
 665 affected parties.

666 Section 14. Paragraph (b) of subsection (4) of section  
 667 736.1208, Florida Statutes, is amended to read:

668 736.1208 Release; property and persons affected; manner of  
 669 effecting.—

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

672 (b) If the release is accomplished by reducing the class  
 673 of permissible charitable organizations, by delivery of notice a  
 674 ~~copy~~ of the release to the ~~state~~ Attorney General, including a  
 675 copy of the release.

676 Section 15. Section 736.1209, Florida Statutes, is amended  
677 to read:

678 736.1209 Election to come under this part.—With the  
679 consent of that organization or organizations, a trustee of a  
680 trust for the benefit of a public charitable organization or  
681 organizations may come under s. 736.1208(5) by delivery of  
682 notice to filing with the state Attorney General of the an  
683 election, accompanied by the proof of required consent.  
684 Thereafter the trust shall be subject to s. 736.1208(5).

685 Section 16. Except as otherwise provided in this act and  
686 except for this section, which shall take effect upon becoming a  
687 law, this act shall take effect July 1, 2017.