

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 and its terms 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 trust documents to include posting on a secure
9 electronic account or website; providing requirements
10 for such documents to be deemed sent; requiring a
11 certain authorization to specify documents subject to
12 electronic posting; revising requirements for a
13 recipient to electronically access such documents;
14 prohibiting the termination of a recipient's
15 electronic access to such documents from invalidating
16 certain notice or sending of electronic trust
17 documents; tolling specified limitations periods under
18 certain circumstances; providing requirements for
19 electronic access to such documents to be deemed
20 terminated by a sender; providing construction;
21 providing applicability; amending s. 736.0404, F.S.;
22 deleting a restriction on the purpose for which a
23 trust is created; amending s. 736.04117, F.S.;
24 defining and redefining terms; authorizing an
25 authorized trustee to appoint all or part of the

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

51 prohibiting a settlor from being treated as the owner
52 of a second trust if he or she was not treated as the
53 owner of the first trust; prohibiting an authorized
54 trustee from distributing a trust's interest in
55 property to a second trust if the interest is subject
56 to specified rules of the Internal Revenue Code;
57 authorizing the exercise of power to invade a trust's
58 principal to apply to a second trust created or
59 administered under the law of any jurisdiction;
60 prohibiting the exercise of power to invade a trust's
61 principal to increase an authorized trustee's
62 compensation or relieve him or her from certain
63 liability; specifying who an authorized trustee must
64 notify when he or she exercises his or her power to
65 invade the trust's principal; specifying the documents
66 that the authorized trustee must provide with such
67 notice; amending s. 736.08135, F.S.; revising
68 applicability; amending s. 736.1008, F.S.; clarifying
69 that certain knowledge by a beneficiary does not cause
70 a claim to accrue for breach of trust or commence the
71 running of a period of limitations or laches;
72 providing legislative intent; providing retroactive
73 application; providing effective dates.

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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,

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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 on a secure electronic
104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting on 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

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126 | username and password.

127 | 3. Advise the recipient that a separate notice will be
128 | sent when a document is posted on ~~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 on ~~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, which identifies each document posted to the electronic
147 | account or website and provides instructions for accessing the
148 | ~~posted~~ document. The separate notice requirement is deemed
149 | satisfied if the recipient accesses the document on the
150 | electronic account or website.

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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 on ~~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 on ~~to~~ an electronic account
173 or 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 pursuant to this subsection, the
191 recipient must be able to access and print or download the
192 document until the earlier of ~~remain accessible to the recipient~~
193 ~~on the electronic account or website for at least 4 years after~~
194 the date that the document is deemed received by the recipient
195 or the date upon which the recipient's access to the electronic
196 account or website is terminated for any reason.

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

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

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

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

218 b. Notice of such termination and notification to the
219 recipient that his or her access to the electronic account or
220 website has been restored.

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222 Any applicable limitations period is further tolled from the
223 date on which any request is made pursuant to sub-subparagraph
224 2.a. until 20 days after the date on which the requested
225 documents are provided to the recipient by means other than

226 electronic posting ~~The electronic account or website must allow~~
227 ~~the recipient to download or print the document. This subsection~~
228 ~~does not affect or alter the duties of a trustee to keep clear,~~
229 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
230 ~~or alter the time periods for which the trustee must maintain~~
231 ~~those records.~~

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

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

250 (j) This subsection governs the posting of a document

251 solely for the purpose of giving notice under this code or the
252 sending of a document to a person under this code and does not
253 prohibit or otherwise apply to the posting of a document on an
254 electronic account or website for any other purpose or preclude
255 the sending of a document by any other means.

256 Section 4. Section 736.0404, Florida Statutes, is amended
257 to read:

258 736.0404 Trust purposes.—A trust may be created only to
259 the extent the purposes of the trust are lawful, not contrary to
260 public policy, and possible to achieve. ~~A trust and its terms~~
261 ~~must be for the benefit of its beneficiaries.~~

262 Section 5. Effective upon becoming a law, section
263 736.04117, Florida Statutes, is amended to read:

264 736.04117 Trustee's power to invade principal in trust.—

265 (1)(a) DEFINITIONS.—As used in this section, the term:
266 ~~Unless the trust instrument expressly provides otherwise, a~~
267 ~~trustee who has absolute power under the terms of a trust to~~
268 ~~invade the principal of the trust, referred to in this section~~
269 ~~as the "first trust," to make distributions to or for the~~
270 ~~benefit of one or more persons may instead exercise the power by~~
271 ~~appointing all or part of the principal of the trust subject to~~
272 ~~the power in favor of a trustee of another trust, referred to in~~
273 ~~this section as the "second trust," for the current benefit of~~
274 ~~one or more of such persons under the same trust instrument or~~
275 ~~under a different trust instrument; provided:~~

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- 276 ~~1. The beneficiaries of the second trust may include only~~
277 ~~beneficiaries of the first trust;~~
- 278 ~~2. The second trust may not reduce any fixed income,~~
279 ~~annuity, or unitrust interest in the assets of the first trust;~~
280 ~~and~~
- 281 ~~3. If any contribution to the first trust qualified for a~~
282 ~~marital or charitable deduction for federal income, gift, or~~
283 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
284 ~~amended, the second trust shall not contain any provision which,~~
285 ~~if included in the first trust, would have prevented the first~~
286 ~~trust from qualifying for such a deduction or would have reduced~~
287 ~~the amount of such deduction.~~
- 288 ~~(b) For purposes of this subsection, an absolute power to~~
289 ~~invade principal shall include~~
- 290 (a) "Absolute power" means a power to invade principal
291 that is not limited to specific or ascertainable purposes, such
292 as health, education, maintenance, and support, regardless of
293 whether or not the term "absolute" is used. A power to invade
294 principal for purposes such as best interests, welfare, comfort,
295 or happiness constitutes ~~shall constitute~~ an absolute power not
296 limited to specific or ascertainable purposes.
- 297 (b) "Authorized trustee" means a trustee, other than the
298 settlor or a beneficiary, who has the power to invade the
299 principal of a trust.
- 300 (c) "Beneficiary with a disability" means a beneficiary of

301 the first trust who the authorized trustee believes may qualify
302 for government benefits based on disability, regardless of
303 whether the beneficiary currently receives those benefits or has
304 been adjudicated incapacitated.

305 (d) "Current beneficiary" means a beneficiary who, on the
306 date his or her qualification is determined, is a distributee or
307 permissible distributee of trust income or principal. The term
308 includes the holder of a presently exercisable general power of
309 appointment but does not include a person who is a beneficiary
310 only because he or she holds another power of appointment.

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

313 (f) "Internal Revenue Code" means the Internal Revenue
314 Code of 1986, as amended.

315 (g) "Power of appointment" has the same meaning as
316 provided in s. 731.201.

317 (h) "Presently exercisable general power of appointment"
318 means a power of appointment exercisable by the power holder at
319 the relevant time. The term:

320 1. Includes a power of appointment that is exercisable
321 only after the occurrence of a specified event or that is
322 subject to a specified restriction, but only after the event has
323 occurred or the restriction has been satisfied.

324 2. Does not include a power of appointment that is
325 exercisable only upon the death of the power holder.

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

334 1. The distribution is applied for the benefit of a
335 beneficiary;

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

339 3. The distribution is made as permitted under the terms
340 of the first trust instrument and the second trust instrument
341 for the benefit of the beneficiary.

342 (j) "Supplemental needs trust" means a trust that the
343 authorized trustee believes would not be considered a resource
344 for purposes of determining whether the beneficiary who has a
345 disability is eligible for government benefits.

346 (k) "Vested interest" means a current unconditional right
347 to receive a mandatory distribution of income, a specified
348 dollar amount, or a percentage of value of a trust, or a current
349 unconditional right to withdraw income, a specified dollar
350 amount, or a percentage of value of a trust, which right is not

351 subject to the occurrence of a specified event, the passage of a
352 specified time, or the exercise of discretion.

353 1. The term includes a presently exercisable general power
354 of appointment.

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

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

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

373 1. The beneficiaries of the second trust include only
374 beneficiaries of the first trust; and

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

376 (b) In an exercise of absolute power, the second trust
 377 may:
 378 1. Retain a power of appointment granted in the first
 379 trust;
 380 2. Omit a power of appointment granted in the first trust,
 381 other than a presently exercisable general power of appointment;
 382 3. Create or modify a power of appointment if the power
 383 holder is a current beneficiary of the first trust;
 384 4. Create or modify a power of appointment if the power
 385 holder is a beneficiary of the first trust who is not a current
 386 beneficiary, but the exercise of the power of appointment may
 387 take effect only after the power holder becomes, or would have
 388 become if then living, a current beneficiary of the first trust;
 389 and
 390 5. Extend the term of the second trust beyond the term of
 391 the first trust.
 392 (c) The class of permissible appointees in favor of which
 393 a created or modified power of appointment may be exercised may
 394 differ from the class identified in the first trust.
 395 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 396 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
 397 Unless the trust instrument expressly provides otherwise, an
 398 authorized trustee who has a power, other than an absolute
 399 power, under the terms of a first trust to invade principal to
 400 make current distributions to or for the benefit of one or more

401 beneficiaries may instead exercise such power by appointing all
402 or part of the principal of the first trust subject to such
403 power in favor of a trustee of one or more second trusts. If the
404 authorized trustee exercises such power:

405 (a) The second trusts, in the aggregate, shall grant each
406 beneficiary of the first trust beneficial interests in the
407 second trusts which are substantially similar to the beneficial
408 interests of the beneficiary in the first trust.

409 (b) If the first trust grants a power of appointment to a
410 beneficiary of the first trust, the second trust shall grant
411 such power of appointment in the second trust to such
412 beneficiary, and the class of permissible appointees shall be
413 the same as in the first trust.

414 (c) If the first trust does not grant a power of
415 appointment to a beneficiary of the first trust, the second
416 trust may not grant a power of appointment in the second trust
417 to such beneficiary.

418 (d) Notwithstanding paragraphs (a), (b), and (c), the term
419 of the second trust may extend beyond the term of the first
420 trust, and, for any period after the first trust would have
421 otherwise terminated, in whole or in part, under the provisions
422 of the first trust, the trust instrument of the second trust
423 may, with respect to property subject to such extended term:

424 1. Include language providing the trustee with the
425 absolute power to invade the principal of the second trust

426 during such extended term; and

427 2. Create a power of appointment, if the power holder is a
428 current beneficiary of the first trust, or expand the class of
429 permissible appointees in favor of which a power of appointment
430 may be exercised.

431 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
432 TRUST.—

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

441 1. The supplemental needs trust benefits the beneficiary
442 with a disability;

443 2. The beneficiaries of the second trust include only
444 beneficiaries of the first trust; and

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

447 (b) Except as affected by any change to the interests of
448 the beneficiary with a disability, the second trusts, in the
449 aggregate, shall grant each other beneficiary of the first trust
450 beneficial interests in the second trusts which are

451 substantially similar to such other beneficiary's beneficial
452 interests in the first trust.

453 (5) PROHIBITED DISTRIBUTIONS.—

454 (a) An authorized trustee may not distribute the principal
455 of a trust under this section in a manner that would prevent a
456 contribution to that trust from qualifying for, or that would
457 reduce a federal tax benefit, including a federal tax exclusion
458 or deduction, which was originally claimed or could have been
459 claimed for that contribution, including:

460 1. An exclusion under s. 2503(b) or s. 2503(c) of the
461 Internal Revenue Code;

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

464 3. A charitable deduction under s. 170(a), s. 642(c), s.
465 2055(a), or s. 2522(a) of the Internal Revenue Code;

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

468 5. Any other tax benefit for income, gift, estate, or
469 generation-skipping transfer tax purposes under the Internal
470 Revenue Code.

471 (b) If S corporation stock is held in the first trust, an
472 authorized trustee may not distribute all or part of that stock
473 to a second trust that is not a permitted shareholder under s.
474 1361(c) (2) of the Internal Revenue Code. If the first trust
475 holds stock in an S corporation and is, or but for provisions of

476 paragraphs (a), (c), and (d) would be, a qualified subchapter S
477 trust within the meaning of s. 1361(d) of the Internal Revenue
478 Code, the second trust instrument may not include or omit a term
479 that prevents it from qualifying as a qualified subchapter S
480 trust.

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

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

496 (6) EXERCISE BY WRITING.—The exercise of a power to invade
497 principal under subsection (2), subsection (3), or subsection
498 (4) must ~~The exercise of a power to invade principal under~~
499 ~~subsection (1) shall be by a written an instrument in writing,~~
500 signed and acknowledged by the authorized trustee, and filed

501 with the records of the first trust.

502 (7)~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of
503 a power to invade principal under subsection (2), subsection
504 (3), or subsection (4):

505 (a) Is ~~(1) shall be~~ considered the exercise of a power of
506 appointment, excluding ~~other than~~ a power to appoint to the
507 authorized trustee, the authorized trustee's creditors, the
508 authorized trustee's estate, or the creditors of the authorized
509 trustee's estate.

510 (b) Is, ~~and shall be~~ subject to the provisions of s.
511 689.225 covering the time at which the permissible period of the
512 rule against perpetuities begins and the law that determines the
513 permissible period of the rule against perpetuities of the first
514 trust.

515 (c) May apply to a second trust created or administered
516 under the law of any jurisdiction.

517 (d) May not:

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

520 2. Relieve the authorized trustee from liability for
521 breach of trust or provide for indemnification of the authorized
522 trustee for any liability or claim to a greater extent than the
523 first trust instrument; however, the exercise of the power may
524 divide and reallocate fiduciary powers among fiduciaries and
525 relieve a fiduciary from liability for an act or failure to act

526 of another fiduciary as otherwise allowed under law or common
 527 law.

528 (8) NOTICE.—

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

538 1. All qualified beneficiaries of the first trust.

539 2. If paragraph (5) (c) applies, the settlor of the first
 540 trust.

541 3. All trustees of the first trust.

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

544 (b) The authorized ~~A copy of the proposed instrument~~
 545 ~~exercising the power shall satisfy the trustee's notice~~
 546 obligation to provide notice under this subsection is satisfied
 547 when he or she provides copies of the proposed instrument
 548 exercising the power, the trust instrument of the first trust,
 549 and the proposed trust instrument of the second trust.

550 (c) If all of those required to be notified ~~qualified~~

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551 ~~beneficiaries~~ waive the notice period by signed written
552 instrument delivered to the authorized trustee, the authorized
553 trustee's power to invade principal shall be exercisable
554 immediately.

555 (d) The authorized trustee's notice under this subsection
556 does ~~shall~~ not limit the right of any beneficiary to object to
557 the exercise of the authorized trustee's power to invade
558 principal except as otherwise provided in other applicable
559 provisions of this code.

560 (9)(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
561 PROHIBITION.—The exercise of the power to invade principal under
562 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
563 prohibited by a spendthrift clause or by a provision in the
564 trust instrument that prohibits amendment or revocation of the
565 trust.

566 (10)(6) NO DUTY TO EXERCISE.—Nothing in this section is
567 intended to create or imply a duty to exercise a power to invade
568 principal, and no inference of impropriety may ~~shall~~ be made as
569 a result of an authorized trustee's failure to exercise a
570 ~~trustee not exercising~~ the power to invade principal conferred
571 under subsections (2), (3), and (4) ~~subsection (1)~~.

572 (11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The~~
573 ~~provisions of~~ This section may ~~shall~~ not be construed to abridge
574 the right of any trustee who has a power of invasion to appoint
575 property in further trust that arises under the terms of the

576 first trust or under any other section of this code or under
 577 another provision of law or under common law.

578 Section 6. Subsection (3) of section 736.08135, Florida
 579 Statutes, is amended to read:

580 736.08135 Trust accountings.—

581 (3) Subsections (1) and (2) govern the form and content of
 582 ~~This section applies to~~ all trust accountings rendered for any
 583 accounting periods beginning on or after January 1, 2003, and
 584 all trust accountings rendered on or after July 1, 2018. This
 585 subsection does not affect the beginning period from which a
 586 trustee is required to render a trust accounting.

587 Section 7. Subsection (3) of section 736.1008, Florida
 588 Statutes, is amended to read:

589 736.1008 Limitations on proceedings against trustees.—

590 (3) When a trustee has not issued a final trust accounting
 591 or has not given written notice to the beneficiary of the
 592 availability of the trust records for examination and that
 593 claims with respect to matters not adequately disclosed may be
 594 barred, a claim against the trustee for breach of trust based on
 595 a matter not adequately disclosed in a trust disclosure document
 596 is barred as provided in chapter 95 and accrues when the
 597 beneficiary has actual knowledge of:

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

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

603
604 Paragraph (a) applies to claims based upon acts or omissions
605 occurring on or after July 1, 2008. A beneficiary's actual
606 knowledge that he or she has not received a trust accounting
607 does not cause a claim to accrue against the trustee for breach
608 of trust based upon the failure to provide a trust accounting
609 required by s. 736.0813 or former s. 737.303 and does not
610 commence the running of any period of limitations or laches for
611 such a claim, and paragraph (a) and chapter 95 do not bar any
612 such claim.

613 Section 8. The changes to ss. 736.08135 and 736.1008,
614 Florida Statutes, made by this act are intended to clarify
615 existing law, are remedial in nature, and apply retroactively to
616 all cases pending or commenced on or after July 1, 2018.

617 Section 9. Except as otherwise provided in this act and
618 except for this section, which shall take effect upon becoming a
619 law, this act shall take effect July 1, 2018.