

By Senator Hukill

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1 A bill to be entitled
2 An act relating to trusts; amending s. 736.0103, F.S.;
3 redefining the term "interests of the beneficiaries";
4 amending s. 736.0105, F.S.; deleting a requirement
5 that a trust 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

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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

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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.

74

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

76

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

79 736.0103 Definitions.—Unless the context otherwise
80 requires, in this code:

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

84 Section 2. Paragraph (c) of subsection (2) of section
85 736.0105, Florida Statutes, is amended to read:

86 736.0105 Default and mandatory rules.—

87 (2) The terms of a trust prevail over any provision of this

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88 code except:

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

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

95 736.0109 Methods and waiver of notice.—

96 (1) Notice to a person under this code or the sending of a
97 document to a person under this code must be accomplished in a
98 manner reasonably suitable under the circumstances and likely to
99 result in receipt of the notice or document. Permissible methods
100 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 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

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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 sent
128 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, the
142 sender must provide a separate notice to the recipient when a
143 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

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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.

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,

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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 through
190 electronic posting pursuant to this subsection, the recipient
191 must be able to access and print or download the document until
192 the earlier of ~~remain accessible to the recipient on the~~
193 ~~electronic account or website for at least 4 years after the~~
194 ~~date that the document is deemed received by the recipient~~ or
195 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

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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.

221
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

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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 the
259 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.~~

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

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

277 ~~1. The beneficiaries of the second trust may include only~~
278 ~~beneficiaries of the first trust;~~

279 ~~2. The second trust may not reduce any fixed income,~~
280 ~~annuity, or unitrust interest in the assets of the first trust,~~
281 ~~and~~

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

289 ~~(b) For purposes of this subsection, an absolute power to~~
290 ~~invade principal shall include a power to invade principal that~~

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291 is not limited to specific or ascertainable purposes, such as
292 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 Code
314 of 1986, as amended.

315 (g) "Power of appointment" has the same meaning as provided
316 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:

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320 1. Includes a power of appointment that is exercisable only
321 after the occurrence of a specified event or that is subject to
322 a specified restriction, but only after the event has occurred
323 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 material
327 change in a beneficiary's beneficial interests or in the power
328 to make distributions and that the power to make a distribution
329 under a second trust for the benefit of a beneficiary who is an
330 individual is substantially similar to the power under the first
331 trust to make a distribution directly to the beneficiary. A
332 distribution is deemed to be for the benefit of a beneficiary
333 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 of
340 the first trust instrument and the second trust instrument for
341 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

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

377 1. Retain a power of appointment granted in the first

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378 trust;

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

381 3. Create or modify a power of appointment if the power
382 holder is a current beneficiary of the first trust;

383 4. Create or modify a power of appointment if the power
384 holder is a beneficiary of the first trust who is not a current
385 beneficiary, but the exercise of the power of appointment may
386 take effect only after the power holder becomes, or would have
387 become if then living, a current beneficiary of the first trust;
388 and

389 5. Extend the term of the second trust beyond the term of
390 the first trust.

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

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

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

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407 interests of the beneficiary in the first trust.

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

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

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

423 1. Include language providing the trustee with the absolute
424 power to invade the principal of the second trust during such
425 extended term; and

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

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

432 (a) Notwithstanding subsections (2) and (3), unless the
433 trust instrument expressly provides otherwise, an authorized
434 trustee who has the power under the terms of a first trust to
435 invade the principal of the first trust to make current

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436 distributions to or for the benefit of a beneficiary with a
437 disability may instead exercise such power by appointing all or
438 part of the principal of the first trust in favor of a trustee
439 of a second trust that is a supplemental needs trust if:

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

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

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

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

452 (5) PROHIBITED DISTRIBUTIONS.—

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

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

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

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

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

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

470 (b) If S corporation stock is held in the first trust, an
471 authorized trustee may not distribute all or part of that stock
472 to a second trust that is not a permitted shareholder under s.
473 1361(c)(2) of the Internal Revenue Code. If the first trust
474 holds stock in an S corporation and is, or but for provisions of
475 paragraphs (a), (c), and (d) would be, a qualified subchapter S
476 trust within the meaning of s. 1361(d) of the Internal Revenue
477 Code, the second trust instrument may not include or omit a term
478 that prevents it from qualifying as a qualified subchapter S
479 trust.

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

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

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494 shorten the otherwise applicable maximum distribution period.

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

501 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
502 power to invade principal under subsection (2), subsection (3),
503 or subsection (4):

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

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

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

516 (d) May not:

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

519 2. Relieve the authorized trustee from liability for breach
520 of trust or provide for indemnification of the authorized
521 trustee for any liability or claim to a greater extent than the
522 first trust instrument; however, the exercise of the power may

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523 divide and reallocate fiduciary powers among fiduciaries and
524 relieve a fiduciary from liability for an act or failure to act
525 of another fiduciary as otherwise allowed under law or common
526 law.

527 (8) NOTICE.-

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

537 1. All qualified beneficiaries of the first trust.

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

540 3. All trustees of the first trust.

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

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

549 (c) If all of those required to be notified qualified
550 beneficiaries waive the notice period by signed written
551 instrument delivered to the authorized trustee, the authorized

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552 trustee's power to invade principal shall be exercisable
553 immediately.

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

559 (9)~~(5)~~ INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
560 PROHIBITION.—The exercise of the power to invade principal under
561 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
562 prohibited by a spendthrift clause or by a provision in the
563 trust instrument that prohibits amendment or revocation of the
564 trust.

565 (10)~~(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
566 intended to create or imply a duty to exercise a power to invade
567 principal, and no inference of impropriety may ~~shall~~ be made as
568 a result of an authorized trustee's failure to exercise a
569 ~~trustee not exercising~~ the power to invade principal conferred
570 under subsections (2), (3), and (4) ~~subsection (1)~~.

571 (11)~~(7)~~ NO ABRIDGEMENT OF COMMON LAW RIGHTS.—~~The provisions~~
572 ~~of~~ This section may ~~shall~~ not be construed to abridge the right
573 of any trustee who has a power of invasion to appoint property
574 in further trust that arises under the terms of the first trust
575 or under any other section of this code or under another
576 provision of law or under common law.

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

579 736.08135 Trust accountings.—

580 (3) Subsections (1) and (2) govern the form and content of

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

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

588 736.1008 Limitations on proceedings against trustees.—

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

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

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

601
602 Paragraph (a) applies to claims based upon acts or omissions
603 occurring on or after July 1, 2008. A beneficiary's actual
604 knowledge that he or she has not received a trust accounting
605 does not cause a claim to accrue against the trustee for breach
606 of trust based upon the failure to provide a trust accounting
607 required by s. 736.0813 or former s. 737.303 and does not
608 commence the running of any period of limitations or laches for
609 such a claim, and paragraph (a) and chapter 95 do not bar any

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610 such claim.

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

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