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LEGISLATIVE ACTION

Senate

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House

Senator Berman moved the following:

Senate Amendment

Delete lines 862 - 1063
and insert:

(b) Entry of a decree of legal separation maintenance by a
court of competent jurisdiction in another state that recognizes
legal separation or maintenance under its laws.

(5) "During marriage" means a period that begins at
marriage and ends upon the dissolution of marriage or upon the
death of a spouse.

(6) "Qualified trustee" means either:



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- 12 (a) A natural person who is a resident of the state; or
13 (b) A company authorized to act as a trustee in the state.

14
15 A qualified trustee's powers include, but are not limited to,
16 maintaining records for the trust on an exclusive or a
17 nonexclusive basis and preparing or arranging for the
18 preparation of, on an exclusive or a nonexclusive basis, any
19 income tax returns that must be filed by the trust.

20 (7) "Settlor spouses" means a married couple who
21 establishes a community property trust pursuant to this part.

22 Section 31. Section 736.1503, Florida Statutes, is created
23 to read:

24 736.1503 Requirements for community property trust.—An
25 arrangement is a community property trust if one or both settlor
26 spouses transfer property to a trust that:

27 (1) Expressly declares that the trust is a community
28 property trust within the meaning of this part.

29 (2) Has at least one trustee who is a qualified trustee,
30 provided that both spouses or either spouse also may be a
31 trustee.

32 (3) Is signed by both settlor spouses consistent with the
33 formalities required for the execution of a trust under this
34 chapter.

35 (4) Contains substantially the following language in
36 capital letters at the beginning of the community property trust
37 agreement:

38
39 THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY
40 BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR



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RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD
PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE
COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND
UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,
THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER
CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT
THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND
INDEPENDENT LEGAL ADVICE. ALTHOUGH NOT A REQUIREMENT,
IT IS STRONGLY ADVISABLE THAT EACH SPOUSE OBTAIN THEIR
OWN SEPARATE LEGAL COUNSEL PRIOR TO THE EXECUTION OF
THIS TRUST.

Section 32. Section 736.1504, Florida Statutes, is created
to read:

736.1504 Agreement establishing community property trust;
amendments and revocation.—

(1) In the agreement establishing a community property
trust, the settlor spouses may agree upon:

(a) The rights and obligations in the property transferred
to the trust, notwithstanding when and where the property is
acquired or located.

(b) The management and control of the property transferred
into the trust.

(c) The disposition of the property transferred to the
trust on dissolution, death, or the occurrence or nonoccurrence
of another event, subject to ss. 736.1507 and 736.1508.

(d) Whether the trust is revocable or irrevocable.

(e) Any other matter that affects the property transferred
to the trust and does not violate public policy or general law



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imposing a criminal penalty, or result in the property not being treated as community property under the laws of a relevant jurisdiction.

(2) In the event of the death of a settlor spouse, the surviving spouse may amend a community property trust regarding the disposition of that spouse's one-half share of the community property, regardless of whether the agreement provides that the community property trust is irrevocable.

(3) A community property trust may be amended or revoked by the settlor spouses unless the agreement itself specifically provides that the community property trust is irrevocable.

(4) Notwithstanding any other provision of this code, the settlor spouses shall be deemed to be the only qualified beneficiaries of a community property trust until the death of one of the settlor spouses, regardless of whether the trust is revocable or irrevocable. After the death of one of the settlor spouses, the surviving spouse shall be deemed to be the only qualified beneficiary as to his or her share of the community property trust.

Section 33. Section 736.1505, Florida Statutes, is created to read:

736.1505 Classification of property as community property; enforcement; duration; management and control; effect of distributions.—

(1) Whether both, one, or neither is domiciled in the state, settlor spouses may classify any or all of their property as community property by transferring that property to a community property trust and providing in the trust that the property is community property pursuant to this part.



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99 (2) A community property trust is enforceable without
100 consideration.

101 (3) All property owned by a community property trust is
102 community property under the laws of the state during the
103 marriage of the settlor spouses.

104 (4) The right to manage and control property that is
105 transferred to a community property trust is determined by the
106 terms of the trust agreement.

107 (5) When property is distributed from a community property
108 trust, the property shall no longer constitute community
109 property within the meaning of this part, provided that
110 community property as classified by a jurisdiction other than
111 the state retains its character as community property to the
112 extent otherwise provided by ss. 732.216-732.228.

113 Section 34. Section 736.1506, Florida Statutes, is created
114 to read:

115 736.1506 Satisfaction of obligations.—Except as provided in
116 s. 4, Art. X of the State Constitution:

117 (1) An obligation solely incurred by one settlor spouse
118 before or during the marriage may be satisfied from that settlor
119 spouse's one-half share of a community property trust, unless
120 otherwise provided in the community property trust agreement.

121 (2) An obligation incurred by both spouses during the
122 marriage may be satisfied from a community property trust of the
123 settlor spouses.

124 Section 35. Section 736.1507, Florida Statutes, is created
125 to read:

126 736.1507 Death of a spouse.—Upon the death of a spouse,
127 one-half of the aggregate value of the property held in a



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community property trust established by the settlor spouses
reflects the share of the surviving spouse and is not subject to
testamentary disposition by the decedent spouse or distribution
under the laws of succession of the state. The other one-half of
the value of that property reflects the share of the decedent
spouse and is subject to testamentary disposition or
distribution under the laws of succession of the state. Unless
provided otherwise in the community property trust agreement,
the trustee has the power to distribute assets of the trust in
divided or undivided interests and to adjust resulting
differences in valuation. A distribution in kind may be made on
the basis of a non-pro rata division of the aggregate value of
the trust assets, on the basis of a pro rata division of each
individual asset, or by using both methods. The decedent's
spouse's one-half share shall not be included in the elective
estate.

Section 36. Section 736.1508, Florida Statutes, is created
to read:

736.1508 Dissolution of marriage.—

(1) Upon the dissolution of the marriage of the settlor
spouses, the community property trust shall terminate and the
trustee shall distribute one-half of the trust assets to each
spouse in accordance with subsection (3). For purposes of this
act, s. 61.075 does not apply to the disposition of the assets
and liabilities held in a community property trust.

(2) The initiation of an action to dissolve the settlor
spouses' marriage does not automatically terminate the community
property trust unless otherwise agreed to by the settlor spouses
in writing or otherwise ordered by the court having jurisdiction



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over the dissolution proceedings between the settlor spouses.
However, if an action to dissolve the settlor spouses' marriage
remains pending for 180 days, the trust automatically terminates
and the trustee must distribute one-half of the trust assets to
each spouse in accordance with subsection (3), unless any of the
following apply:

(a) A settlor spouse objects to the termination within 180
days following the filing of the dissolution action. At which
time, either party may request that the court having
jurisdiction over the dissolution proceedings between the
settlor spouses determine if good cause exists to terminate the
community property trust during the pendency of the dissolution
of marriage action.

(b) The court having jurisdiction over the dissolution
proceedings between the settlor spouses enters an order
directing otherwise.

(c) The settlor spouses otherwise agree, in writing, while
the dissolution of marriage action is pending.

(d) The community property trust agreement provides
otherwise.

(3) Unless provided otherwise in the community property
trust agreement, the trustee has the power to distribute assets
of the trust in divided or undivided interests and to adjust
resulting differences in valuation. A distribution in kind may
be made on the basis of a non-pro rata division of the aggregate
value of the trust assets, on the basis of a pro rata division
of each individual asset, or by using both methods. A trustee
may not distribute real property or business interests in a
manner that would leave the settlor spouses as co-owners of such



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assets post dissolution of the settlor spouses' marriage or
termination of the community property trust, unless otherwise
agreed to by the settlor spouses in a separate written agreement
executed during the dissolution of marriage action.

Notwithstanding any other provision of this section, the
community property trust agreement cannot be terminated, and the
assets cannot be distributed, in a manner that could cause the
trust assets to not be treated as community property.

(4) The court having jurisdiction over the dissolution
proceedings between the settlor spouses has personal and subject
matter jurisdiction over the settlor spouses and the trustee of
the community property trust for the purpose of effectuating the
distribution of the community property trust assets consistent
with the terms of the community property trust agreement, in a
manner ensuring that the trust assets retain their community
property character.

Section 37. Section 736.1509, Florida Statutes, is created
to read:

736.1509 Right of child to support.—A community property
trust does not adversely affect the right of a child of the
settlor spouses to support, pursuant to s. 61.30 or the
applicable law of another jurisdiction, that either spouse would
be required to give under the applicable laws of the settlor
spouses' state of domicile.

Section 38. Section 736.151, Florida Statutes, is created
to read:

736.151 Homestead property.—

(1) Property that is transferred to or acquired subject to
a community property trust may continue to qualify or may



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initially qualify as the settlor spouses' homestead within the meaning of s. 4(a)(1), Art. X of the State Constitution and for all purposes of general law, provided that the property would qualify as the settlor spouses' homestead if title was held in one or both of the settlor spouses' individual names.

(2) The settlor spouses shall be deemed to have beneficial title in equity to the homestead property held subject to a community property trust for all purposes, including for purposes of s. 196.031.

Section 39. Section 736.1511, Florida Statutes, is created to read:

736.1511 Application of Internal Revenue Code; community property classified by another jurisdiction.—For purposes of the application of s. 1014(b)(6) of the Internal Revenue Code of 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a community property trust is considered a trust established under the community property laws of the state. Community property, as classified by a jurisdiction other than this state, which is transferred to a community property trust retains its character as community property while in the trust. If the trust is revoked and property is transferred on revocation of the trust, the community property as classified by a jurisdiction other than the state retains its character as community property to the extent otherwise provided by ss. 732.216-732.228.

Section 40. Section 736.1512, Florida Statutes, is created to read:

736.1512 Unenforceable trusts.—

(1) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought



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proves that:

(a) The trust was unconscionable when made;

(b) The spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily;

(c) The community property trust agreement was the product of fraud, duress, coercion, or overreaching; or

(d) Before execution of the community property trust agreement, the spouse against whom enforcement is sought:

1. Was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse.

2. Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided.

3. Did not have notice of the property or financial obligations of the other spouse.

(2) Whether a community property trust is unconscionable shall be determined by a court as a matter of law.

(3) A community property trust may not be deemed unenforceable solely on the fact that the settlor spouses did not have separate legal representation when executing the community property trust agreement.