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LEGISLATIVE ACTION

Senate

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House

Floor: 1/AD/2R

04/21/2021 10:55 AM

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

52  
53 Section 32. Section 736.1504, Florida Statutes, is created  
54 to read:

55 736.1504 Agreement establishing community property trust;  
56 amendments and revocation.—

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

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

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

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

67 (d) Whether the trust is revocable or irrevocable.

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



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

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

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

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

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

91 736.1505 Classification of property as community property;  
92 enforcement; duration; management and control; effect of  
93 distributions.-

94 (1) Whether both, one, or neither is domiciled in the  
95 state, settlor spouses may classify any or all of their property  
96 as community property by transferring that property to a  
97 community property trust and providing in the trust that the  
98 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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128 community property trust established by the settlor spouses  
129 reflects the share of the surviving spouse and is not subject to  
130 testamentary disposition by the decedent spouse or distribution  
131 under the laws of succession of the state. The other one-half of  
132 the value of that property reflects the share of the decedent  
133 spouse and is subject to testamentary disposition or  
134 distribution under the laws of succession of the state. Unless  
135 provided otherwise in the community property trust agreement,  
136 the trustee has the power to distribute assets of the trust in  
137 divided or undivided interests and to adjust resulting  
138 differences in valuation. A distribution in kind may be made on  
139 the basis of a non-pro rata division of the aggregate value of  
140 the trust assets, on the basis of a pro rata division of each  
141 individual asset, or by using both methods. The decedent's  
142 spouse's one-half share shall not be included in the elective  
143 estate.

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

146 736.1508 Dissolution of marriage.-

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

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



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

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

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

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

175 (d) The community property trust agreement provides  
176 otherwise.

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



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

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

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

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

204 736.1509 Right of child to support.—A community property  
205 trust does not adversely affect the right of a child of the  
206 settlor spouses to support, pursuant to s. 61.30 or the  
207 applicable law of another jurisdiction, that either spouse would  
208 be required to give under the applicable laws of the settlor  
209 spouses' state of domicile.

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

212 736.151 Homestead property.—

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





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

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

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

226 736.1511 Application of Internal Revenue Code; community  
227 property classified by another jurisdiction.—For purposes of the  
228 application of s. 1014(b)(6) of the Internal Revenue Code of  
229 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a  
230 community property trust is considered a trust established under  
231 the community property laws of the state. Community property, as  
232 classified by a jurisdiction other than this state, which is  
233 transferred to a community property trust retains its character  
234 as community property while in the trust. If the trust is  
235 revoked and property is transferred on revocation of the trust,  
236 the community property as classified by a jurisdiction other  
237 than the state retains its character as community property to  
238 the extent otherwise provided by ss. 732.216-732.228.

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

241 736.1512 Unenforceable trusts.—

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



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244 proves that:

245 (a) The trust was unconscionable when made;

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

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

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

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

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

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

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

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