

By the Committee on Judiciary; and Senator Berman

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1                   A bill to be entitled  
2           An act relating to estates and trusts; amending s.  
3           69.031, F.S.; requiring the court to allow an officer  
4           to elect to post and maintain a certain bond;  
5           requiring the court to vacate or terminate an order  
6           under certain circumstances; making technical changes;  
7           amending s. 732.507, F.S.; providing that certain  
8           provisions of a will are void upon dissolution of  
9           marriage; specifying when dissolution of marriage  
10          occurs; providing applicability; amending s. 736.0103,  
11          F.S.; defining terms; revising the definition of the  
12          term "terms of a trust"; amending s. 736.0105, F.S.;  
13          revising the exceptions for when the terms of a trust  
14          do not prevail over provisions of the Florida Trust  
15          Code; amending s. 736.0201, F.S.; authorizing certain  
16          proceedings to determine the homestead status of real  
17          property owned by a trust to be filed in the probate  
18          proceeding for the settlor's estate; requiring that  
19          such proceedings be governed by the Florida Probate  
20          Rules; amending s. 736.0603, F.S.; transferring  
21          provisions that authorize a trustee to follow certain  
22          directions; amending s. 736.0703, F.S.; conforming  
23          provisions to changes made by the act; repealing s.  
24          736.0808, F.S., relating to powers to direct; amending  
25          s. 736.1008, F.S.; specifying that certain claims  
26          barred against a trustee or trust director are also  
27          barred against certain persons acting for that  
28          trustee; conforming provisions to changes made by the  
29          act; amending s. 736.1017, F.S.; revising the

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30 information required to be included in a certification  
31 of trust; amending s. 736.1105, F.S.; revising the  
32 effects that subsequent marriages, births, adoptions,  
33 or dissolutions of marriage have on a revocable trust;  
34 providing construction; providing applicability;  
35 creating s. 736.1109, F.S.; specifying how title  
36 passes for certain devisees of homesteads which violate  
37 the State Constitution; specifying that certain powers  
38 do not subject an interest in a protected homestead to  
39 certain claims; providing applicability; creating part  
40 XIV of chapter 736, F.S., entitled the "Florida  
41 Uniform Directed Trust Act"; creating s. 736.1401,  
42 F.S.; providing a short title; creating s. 736.1403,  
43 F.S.; providing applicability; providing for the  
44 validity of certain terms in a directed trust which  
45 designate principal places of administration; creating  
46 s. 736.1405, F.S.; defining the term "power of  
47 appointment"; providing applicability; specifying the  
48 types of powers granted to persons other than  
49 trustees; creating s. 736.1406, F.S.; authorizing the  
50 terms of a trust to grant a power of direction to a  
51 trust director; specifying the powers included in a  
52 power of direction; creating s. 736.1407, F.S.;  
53 providing for limitations on trust directors; creating  
54 s. 736.1408, F.S.; providing duties and liabilities  
55 for trust directors; creating s. 736.1409, F.S.;  
56 providing duties and liabilities for directed  
57 trustees; creating s. 736.141, F.S.; requiring a  
58 trustee to provide certain information to a trust

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59 director; requiring a trust director to provide  
60 certain information to a trustee or another trust  
61 director and a qualified beneficiary; providing that a  
62 trustee or a trust director acting in reliance on  
63 certain information is not liable for a breach of  
64 trust in certain circumstances; creating s. 736.1411,  
65 F.S.; specifying that trustees and trust directors do  
66 not have a duty to monitor, inform, or advise  
67 specified persons under certain circumstances;  
68 creating s. 736.1412, F.S.; transferring provisions  
69 relating to the appointment of trustees; creating s.  
70 736.1413, F.S.; providing limitations on actions  
71 against trust directors; creating s. 736.1414, F.S.;  
72 authorizing trust directors to assert specified  
73 defenses in certain actions; creating s. 736.1415,  
74 F.S.; specifying that a trust director submits to  
75 specified personal jurisdiction by accepting  
76 appointment as a trust director; providing  
77 construction; creating s. 736.1416, F.S.; requiring  
78 trust directors to be considered a trustee for certain  
79 purposes; authorizing certain persons to make a  
80 specified written demand to accept or confirm prior  
81 acceptance of trust directorships; creating part XV of  
82 chapter 736, F.S., entitled the "Community Property  
83 Trust Act"; creating s. 736.1501, F.S.; providing a  
84 short title; creating s. 736.1502, F.S.; defining  
85 terms; creating s. 736.1503, F.S.; providing that an  
86 arrangement is a community property trust in certain  
87 circumstances; creating s. 736.1504, F.S.; authorizing

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88 settlor spouses to agree upon certain terms in an  
89 agreement establishing a community property trust;  
90 specifying when a community property trust may be  
91 amended or revoked; specifying qualified beneficiaries  
92 of community property trusts; creating s. 736.1505,  
93 F.S.; providing that settlor spouses may classify any  
94 property as community property by transferring that  
95 property to a community property trust regardless of  
96 domicile; providing for enforceability and duration of  
97 a community property trust; providing that the right  
98 to manage and control certain property is determined  
99 by the terms of the trust agreement; providing the  
100 effect of distributions from a community property  
101 trust; creating s. 736.1506, F.S.; providing for the  
102 satisfaction of obligations incurred by one or both  
103 spouses from a community property trust; creating s.  
104 736.1507, F.S.; providing for the disposition or  
105 distribution of certain property upon the death of a  
106 spouse; creating s. 736.1508, F.S.; providing for the  
107 termination of a community property trust upon  
108 dissolution of marriage; creating s. 736.1509, F.S.;  
109 providing that a community property trust does not  
110 adversely affect certain rights of a child; creating  
111 s. 736.151, F.S.; providing that certain property held  
112 in a community property trust qualifies as homestead  
113 property; creating s. 736.1511, F.S.; providing for  
114 the application of the Internal Revenue Code to a  
115 community property trust; creating s. 736.1512, F.S.;  
116 providing that a community property trust is not

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117 enforceable in certain circumstances; amending ss.  
118 736.0802, 736.08125, and 738.104, F.S.; conforming  
119 cross-references; amending s. 744.3679, F.S.;  
120 conforming a provision to changes made by the act;  
121 providing a directive to the Division of Law Revision;  
122 providing for severability; providing effective dates.  
123

124 Be It Enacted by the Legislature of the State of Florida:  
125

126 Section 1. Effective upon this act becoming a law, section  
127 69.031, Florida Statutes, is amended to read:

128 69.031 Designated financial institutions for property  
129 ~~assets~~ in hands of guardians, curators, administrators,  
130 trustees, receivers, or other officers.—

131 (1) When it is expedient in the judgment of any court  
132 having jurisdiction of any estate in process of administration  
133 by any guardian, curator, executor, administrator, trustee,  
134 receiver, or other officer, because the size of the bond  
135 required of the officer is burdensome or for other cause, the  
136 court may order part or all of the personal property assets of  
137 the estate placed with a bank, trust company, or savings and  
138 loan association (which savings and loan association is a member  
139 of the Federal Savings and Loan Insurance Corporation and doing  
140 business in this state) designated by the court, consideration  
141 being given to any bank, trust company or savings and loan  
142 association proposed by the officer. Notwithstanding the  
143 foregoing, in probate proceedings and in accordance with s.  
144 733.402, the court shall allow the officer at any time to elect  
145 to post and maintain bond for the value of the personal

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146 property, or such other reasonable amount determined by the  
147 court, whereupon the court shall vacate or terminate any order  
148 establishing the depository. When the property is ~~assets are~~  
149 placed with the designated financial institution, it shall file  
150 a receipt therefor in the name of the estate and give the  
151 officer a copy. Such receipt shall acknowledge the property  
152 ~~assets~~ received by the financial institution. All interest,  
153 dividends, principal and other debts collected by the financial  
154 institution on account thereof shall be held by the financial  
155 institution in safekeeping, subject to the instructions of the  
156 officer authorized by order of the court directed to the  
157 financial institution.

158 (2) Accountings shall be made to the officer at reasonably  
159 frequent intervals. After the receipt for the original property  
160 ~~assets~~ has been filed by the financial institution, the court  
161 shall waive the bond given or to be given or reduce it so that  
162 it shall apply only to the estate remaining in the hands of the  
163 officer, whichever the court deems proper.

164 (3) When the court has ordered any property ~~assets~~ of an  
165 estate to be placed with a designated financial institution, any  
166 person or corporation having possession or control of any of the  
167 property ~~assets~~, or owing interest, dividends, principal or  
168 other debts on account thereof, shall pay and deliver such  
169 property ~~assets~~, interest, dividends, principal and other debts  
170 to the financial institution on its demand whether the officer  
171 has duly qualified or not, and the receipt of the financial  
172 institution relieves the person or corporation from further  
173 responsibility therefor.

174 (4) Any bank, trust company, or savings and loan

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175 association which is designated under this section, may accept  
176 or reject the designation in any instance, and shall file its  
177 acceptance or rejection with the court making the designation  
178 within 15 days after actual knowledge of the designation comes  
179 to the attention of the financial institution, and if the  
180 financial institution accepts, it shall be allowed a reasonable  
181 amount for its services and expenses which the court may allow  
182 as a charge against the property assets placed with the  
183 financial institution.

184 Section 2. Effective upon this act becoming a law, section  
185 732.507, Florida Statutes, is amended to read:

186 732.507 Effect of subsequent marriage, birth, adoption, or  
187 dissolution of marriage.—

188 (1) Neither subsequent marriage, birth, nor adoption of  
189 descendants shall revoke the prior will of any person, but the  
190 pretermitted child or spouse shall inherit as set forth in ss.  
191 732.301 and 732.302, regardless of the prior will.

192 (2) Any provision of a will ~~executed by a married person~~  
193 that affects the testator's spouse ~~is of that person shall~~  
194 ~~become~~ void upon dissolution of the marriage of the testator and  
195 the spouse, whether the marriage occurred before or after the  
196 execution of such will. Upon dissolution of marriage ~~the divorce~~  
197 ~~of that person or upon the dissolution or annulment of the~~  
198 ~~marriage. After the dissolution, divorce, or annulment, the will~~  
199 ~~shall be administered and construed as if the former spouse had~~  
200 ~~died at the time of the dissolution~~ of marriage, divorce, or  
201 ~~annulment of the marriage, unless the will or the dissolution or~~  
202 ~~divorce judgment expressly provides otherwise.~~

203 (a) Dissolution of marriage occurs at the time the

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204 decedent's marriage is judicially dissolved or declared invalid  
205 by court order.

206 (b) This subsection does not invalidate a provision of a  
207 will:

208 1. Executed by the testator after the dissolution of the  
209 marriage;

210 2. If there is a specific intention to the contrary stated  
211 in the will; or

212 3. If the dissolution of marriage judgment expressly  
213 provides otherwise.

214 (3) This section applies to wills of decedents who die on  
215 or after the effective date of this section.

216 Section 3. Present subsections (6) through (13), (14)  
217 through (21), and (22) and (23) of section 736.0103, Florida  
218 Statutes, are redesignated as subsections (8) through (15), (17)  
219 through (24), and (26) and (27), respectively, new subsections  
220 (6), (7), and (16) and subsection (25) are added to that  
221 section, and present subsection (21) of that section is amended,  
222 to read:

223 736.0103 Definitions.—Unless the context otherwise  
224 requires, in this code:

225 (6) "Directed trust" means a trust for which the terms of  
226 the trust grant a power of direction.

227 (7) "Directed trustee" means a trustee that is subject to a  
228 trust director's power of direction.

229 (16) "Power of direction" means a power over a trust  
230 granted to a person by the terms of the trust to the extent the  
231 power is exercisable while the person is not serving as a  
232 trustee. The term includes a power over the investment,



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233 management, or distribution of trust property, a power to amend  
234 a trust instrument or terminate a trust, or a power over other  
235 matters of trust administration. The term excludes the powers  
236 excluded from part XIV of this chapter under s. 736.1405(2).

237 (24) ~~(21)~~ "Terms of a trust" means:

238 (a) Except as otherwise provided in paragraph (b), the  
239 manifestation of the settlor's intent regarding a trust's  
240 provisions as:

241 1. Expressed in the trust instrument; or

242 2. Established by other evidence that would be admissible  
243 in a judicial proceeding; or

244 (b) The trust's provisions as established, determined, or  
245 amended by:

246 1. A trustee or trust director in accordance with  
247 applicable law;

248 2. Court order; or

249 3. A nonjudicial settlement agreement under s. 736.0111,  
250 relating to nonjudicial settlement agreements ~~the manifestation~~  
251 of the settlor's intent regarding a trust's provisions as  
252 expressed in the trust instrument or as may be established by  
253 other evidence that would be admissible in a judicial  
254 proceeding.

255 (25) "Trust director" means a person who is granted a power  
256 of direction by the terms of a trust to the extent the power is  
257 exercisable while the person is not serving as a trustee. The  
258 person is a trust director whether or not the terms of the trust  
259 refer to the person as a trust director and whether or not the  
260 person is a beneficiary or settlor of the trust.

261 Section 4. Paragraph (b) of subsection (2) of section

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262 736.0105, Florida Statutes, is amended to read:

263 736.0105 Default and mandatory rules.—

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

266 (b) Subject to s. 736.1409, relating to the duties and  
267 liabilities of a directed trustee; s. 736.1411, relating to  
268 limitations on duties of a trustee or trust director to monitor,  
269 inform, or advise on matters involving the other; and s.  
270 736.1412, relating to the allocation of powers among cotrustees,  
271 requirements for excluded cotrustees to act as a directed  
272 trustee, and liability and related obligations of directing  
273 cotrustees, the duty of the trustee to act in good faith and in  
274 accordance with the terms and purposes of the trust and the  
275 interests of the beneficiaries.

276 Section 5. Subsection (1) of section 736.0201, Florida  
277 Statutes, is amended, and subsection (7) is added to that  
278 section, to read:

279 736.0201 Role of court in trust proceedings.—

280 (1) Except as provided in subsections (5), ~~and~~ (6), and (7)  
281 and s. 736.0206, judicial proceedings concerning trusts shall be  
282 commenced by filing a complaint and shall be governed by the  
283 Florida Rules of Civil Procedure.

284 (7) A proceeding to determine the homestead status of real  
285 property owned by a trust may be filed in the probate proceeding  
286 for the settlor's estate if the settlor was treated as the owner  
287 of the interest held in the trust under s. 732.4015. The  
288 proceeding shall be governed by the Florida Probate Rules.

289 Section 6. Subsection (3) is added to section 736.0603,  
290 Florida Statutes, to read:

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291 736.0603 Settlor's powers; powers of withdrawal.—

292 (3) Subject to ss. 736.0403(2) and 736.0602(3) (a), the  
293 trustee may follow a direction of the settlor that is contrary  
294 to the terms of the trust while a trust is revocable.

295 Section 7. Subsections (3), (7), and (9) of section  
296 736.0703, Florida Statutes, are amended to read:

297 736.0703 Cotrustees.—

298 (3) Subject to s. 736.1412, relating to the allocation of  
299 powers among cotrustees, requirements for excluded cotrustees to  
300 act as a directed trustee, and liability and related obligations  
301 of directing cotrustees, a cotrustee must participate in the  
302 performance of a trustee's function unless the cotrustee is  
303 unavailable to perform the function because of absence, illness,  
304 disqualification under other provision of law, or other  
305 temporary incapacity or the cotrustee has properly delegated the  
306 performance of the function to another cotrustee.

307 (7) Except as otherwise provided in s. 736.1412, relating  
308 to the allocation of powers among cotrustees, requirements for  
309 excluded cotrustees to act as a directed trustee, and liability  
310 and related obligations of directing cotrustees ~~subsection (9),~~  
311 each cotrustee shall exercise reasonable care to:

312 (a) Prevent a cotrustee from committing a breach of trust.

313 (b) Compel a cotrustee to redress a breach of trust.

314 ~~(9) If the terms of a trust provide for the appointment of~~  
315 ~~more than one trustee but confer upon one or more of the~~  
316 ~~trustees, to the exclusion of the others, the power to direct or~~  
317 ~~prevent specified actions of the trustees, the excluded trustees~~  
318 ~~shall act in accordance with the exercise of the power. Except~~  
319 ~~in cases of willful misconduct on the part of the excluded~~

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320 trustee, ~~an excluded trustee is not liable, individually or as a~~  
321 ~~fiduciary, for any consequence that results from compliance with~~  
322 ~~the exercise of the power. An excluded trustee does not have a~~  
323 ~~duty or an obligation to review, inquire, investigate, or make~~  
324 ~~recommendations or evaluations with respect to the exercise of~~  
325 ~~the power. The trustee or trustees having the power to direct or~~  
326 ~~prevent actions of the excluded trustees shall be liable to the~~  
327 ~~beneficiaries with respect to the exercise of the power as if~~  
328 ~~the excluded trustees were not in office and shall have the~~  
329 ~~exclusive obligation to account to and to defend any action~~  
330 ~~brought by the beneficiaries with respect to the exercise of the~~  
331 ~~power. The provisions of s. 736.0808(2) do not apply if the~~  
332 ~~person entrusted with the power to direct the actions of the~~  
333 ~~excluded trustee is also a cotrustee.~~

334 Section 8. Section 736.0808, Florida Statutes, is repealed.

335 Section 9. Present subsection (7) of section 736.1008,  
336 Florida Statutes, is redesignated as subsection (8), a new  
337 subsection (7) is added to that section, and paragraph (a) of  
338 subsection (1), subsection (2), and paragraphs (a) and (c) of  
339 subsection (4) of that section are amended, to read:

340 736.1008 Limitations on proceedings against trustees.-

341 (1) Except as provided in subsection (2), all claims by a  
342 beneficiary against a trustee for breach of trust are barred as  
343 provided in chapter 95 as to:

344 (a) All matters adequately disclosed in a trust disclosure  
345 document issued by the trustee or a trust director, with the  
346 limitations period beginning on the date of receipt of adequate  
347 disclosure.

348 (2) Unless sooner barred by adjudication, consent, or

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349 limitations, a beneficiary is barred from bringing an action  
350 against a trustee for breach of trust with respect to a matter  
351 that was adequately disclosed in a trust disclosure document  
352 unless a proceeding to assert the claim is commenced within 6  
353 months after receipt from the trustee or a trust director of the  
354 trust disclosure document or a limitation notice that applies to  
355 that disclosure document, whichever is received later.

356 (4) As used in this section, the term:

357 (a) "Trust disclosure document" means a trust accounting or  
358 any other written report of the trustee or a trust director. A  
359 trust disclosure document adequately discloses a matter if the  
360 document provides sufficient information so that a beneficiary  
361 knows of a claim or reasonably should have inquired into the  
362 existence of a claim with respect to that matter.

363 (c) "Limitation notice" means a written statement of the  
364 trustee or a trust director that an action by a beneficiary  
365 ~~against the trustee~~ for breach of trust based on any matter  
366 adequately disclosed in a trust disclosure document may be  
367 barred unless the action is commenced within 6 months after  
368 receipt of the trust disclosure document or receipt of a  
369 limitation notice that applies to that trust disclosure  
370 document, whichever is later. A limitation notice may but is not  
371 required to be in the following form: "An action for breach of  
372 trust based on matters disclosed in a trust accounting or other  
373 written report of the trustee or a trust director may be subject  
374 to a 6-month statute of limitations from the receipt of the  
375 trust accounting or other written report. If you have questions,  
376 please consult your attorney."

377 (7) Any claim barred against a trustee or trust director

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378 under this section is also barred against the directors,  
379 officers, and employees acting for the trustee.

380 Section 10. Present paragraphs (e), (f), and (g) of  
381 subsection (1) of section 736.1017, Florida Statutes, are  
382 redesignated as paragraphs (f), (g), and (h), respectively, and  
383 a new paragraph (e) is added to that subsection, to read:

384 736.1017 Certification of trust.—

385 (1) Instead of furnishing a copy of the trust instrument to  
386 a person other than a beneficiary, the trustee may furnish to  
387 the person a certification of trust containing the following  
388 information:

389 (e) Whether the trust contains any powers of direction, and  
390 if so, the identity of the current trust directors, the trustee  
391 powers subject to a power of direction, and whether the trust  
392 directors have directed or authorized the trustee to engage in  
393 the proposed transaction for which the certification of trust  
394 was issued.

395 Section 11. Effective upon this act becoming a law, section  
396 736.1105, Florida Statutes, is amended to read:

397 (Substantial rewording of section. See  
398 s. 736.1105, F.S., for present text.)

399 736.1105 Effect of subsequent marriage, birth, adoption, or  
400 dissolution of marriage.—

401 (1) Neither subsequent marriage, birth, nor adoption of  
402 descendants shall revoke the revocable trust of any person.

403 (2) Any provision of a revocable trust that affects the  
404 settlor's spouse is void upon dissolution of the marriage of the  
405 settlor and the spouse, whether the marriage occurred before or  
406 after the execution of such revocable trust. Upon dissolution of

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407 marriage, the revocable trust shall be construed as if the  
408 spouse had died at the time of the dissolution of marriage.

409 (a) Dissolution of marriage occurs at the time the  
410 decedent's marriage is judicially dissolved or declared invalid  
411 by court order.

412 (b) This subsection does not invalidate a provision of a  
413 revocable trust:

414 1. Executed by the settlor after the dissolution of the  
415 marriage;

416 2. If there is a specific intention to the contrary stated  
417 in the revocable trust; or

418 3. If the dissolution of marriage judgment expressly  
419 provides otherwise.

420 (3) This section applies to revocable trusts of decedents  
421 who die on or after the effective date of this section.

422 Section 12. Section 736.1109, Florida Statutes, is created  
423 to read:

424 736.1109 Testamentary and revocable trusts; homestead  
425 protections.—

426 (1) If a devise of homestead under a trust violates the  
427 limitations on the devise of homestead in s. 4(c), Art. X of the  
428 State Constitution, title shall pass as provided in s. 732.401  
429 at the moment of death.

430 (2) A power of sale or general direction to pay debts,  
431 expenses and claims within the trust instrument does not subject  
432 an interest in the protected homestead to the claims of  
433 decedent's creditors, expenses of administration, and  
434 obligations of the decedent's estate as provided in s.  
435 736.05053.

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436 (3) If a trust directs the sale of property that would  
437 otherwise qualify as protected homestead, and the property is  
438 not subject to the constitutional limitations on the devise of  
439 homestead under the State Constitution, title shall remain  
440 vested in the trustee and subject to the provisions of the  
441 trust.

442 (4) This section applies only to trusts described in s.  
443 733.707(3) and to testamentary trusts.

444 (5) This section is intended to clarify existing law and  
445 applies to the administration of trusts and estates of decedents  
446 who die before, on, or after July 1, 2021.

447 Section 13. Part XIV of chapter 736, Florida Statutes,  
448 consisting of ss. 736.1401-736.1416, Florida Statutes, is  
449 created and entitled the "Florida Uniform Directed Trust Act."

450 Section 14. Section 736.1401, Florida Statutes, is created  
451 to read:

452 736.1401 Short title.—This part may be cited as the  
453 "Florida Uniform Directed Trust Act."

454 Section 15. Section 736.1403, Florida Statutes, is created  
455 to read:

456 736.1403 Application; principal place of administration.—

457 (1) This part applies to a trust subject to this chapter,  
458 whenever created, that has its principal place of administration  
459 in the state, subject to the following rules:

460 (a) If the trust was created before July 1, 2021, this part  
461 applies only to a decision or action occurring on or after July  
462 1, 2021.

463 (b) If the principal place of administration of the trust  
464 is changed to the state on or after July 1, 2021, this part



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465 applies only to a decision or action occurring on or after the  
466 date of the change.

467 (2) In addition s. 736.0108, relating to a trust's  
468 principal place of administration, in a directed trust, terms of  
469 the trust that designate the principal place of administration  
470 of the trust in the state are valid and controlling if a trust  
471 director's principal place of business is located in or a trust  
472 director is a resident of the state.

473 Section 16. Section 736.1405, Florida Statutes, is created  
474 to read:

475 736.1405 Exclusions.—

476 (1) As used in this section, the term "power of  
477 appointment" means a power that enables a person acting in a  
478 nonfiduciary capacity to designate a recipient of an ownership  
479 interest in or another power of appointment over trust property.

480 (2) Unless the terms of a trust expressly provide otherwise  
481 by specific reference to this part, section, or paragraph, this  
482 part does not apply to:

483 (a) A power of appointment;

484 (b) A power to appoint or remove a trustee or trust  
485 director;

486 (c) A power of a settlor over a trust while the trust is  
487 revocable by that settlor;

488 (d) A power of a beneficiary over a trust to the extent the  
489 exercise or nonexercise of the power affects the beneficial  
490 interest of:

491 1. The beneficiary; or

492 2. Another beneficiary represented by the beneficiary under  
493 ss. 736.0301-736.0305 with respect to the exercise or

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494 nonexercise of the power;

495 (e) A power over a trust if the terms of the trust provide  
496 that the power is held in a nonfiduciary capacity; and

497 1. The power must be held in a nonfiduciary capacity to  
498 achieve the settlor's tax objectives under the United States  
499 Internal Revenue Code of 1986, as amended, and regulations  
500 issued thereunder, as amended; or

501 2. It is a power to reimburse the settlor for all or a part  
502 of the settlor's income tax liabilities attributable to the  
503 income of the trust; or

504 (f) A power to add or to release a power under the trust  
505 instrument if the power subject to addition or release causes  
506 the settlor to be treated as the owner of all or any portion of  
507 the trust for federal income tax purposes.

508 (3) Unless the terms of a trust provide otherwise, a power  
509 granted to a person other than a trustee:

510 (a) To designate a recipient of an ownership interest in  
511 trust property, including a power to terminate a trust, is a  
512 power of appointment and not a power of direction.

513 (b) To create, modify, or terminate a power of appointment  
514 is a power of direction and not a power of appointment, except a  
515 power to create a power of appointment that is an element of a  
516 broader power to affect an ownership interest in trust property  
517 beyond the mere creation of a power of appointment, such as a  
518 power to appoint trust property in further trust, is a power of  
519 appointment and not a power of direction.

520 Section 17. Section 736.1406, Florida Statutes, is created  
521 to read:

522 736.1406 Power of trust director.-

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523 (1) Subject to s. 736.1407, relating to trust directors  
524 being subject to the same rules as a trustee regarding Social  
525 Security Act reimbursement requirements and charitable trust  
526 instruments, the terms of a trust may grant a power of direction  
527 to a trust director.

528 (2) A power of direction includes only those powers granted  
529 by the terms of the trust.

530 (3) Unless the terms of a trust provide otherwise:

531 (a) A trust director may exercise any further power  
532 appropriate to the exercise or nonexercise of a power of  
533 direction granted to the trust director under subsection (1);  
534 and

535 (b) Trust directors with joint powers must act by majority  
536 decision.

537 Section 18. Section 736.1407, Florida Statutes, is created  
538 to read:

539 736.1407 Limitations on trust director.—A trust director is  
540 subject to the same rules as a trustee in a like position and  
541 under similar circumstances in the exercise or nonexercise of a  
542 power of direction or further power under s. 736.1406(3)(a),  
543 relating to additional power granted to a trust director in  
544 furtherance of an express power of direction, regarding:

545 (1) A payback provision in the terms of a trust necessary  
546 to comply with the reimbursement requirements of s. 1917 of the  
547 Social Security Act, 42 U.S.C. s. 1396p(d)(4)(A), as amended,  
548 and regulations issued thereunder, as amended.

549 (2) A charitable interest in the trust, including notice  
550 regarding the interest to the Attorney General.

551 Section 19. Section 736.1408, Florida Statutes, is created

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552 to read:

553 736.1408 Duty and liability of trust director.-

554 (1) Subject to subsection (2), with respect to a power of  
555 direction or further power under s. 736.1406(3) (a), relating to  
556 additional power granted to a trust director in furtherance of  
557 an express power of direction:

558 (a) A trust director has the same fiduciary duty and  
559 liability in the exercise or nonexercise of the power:

560 1. If the power is held individually, as a sole trustee in  
561 a like position and under similar circumstances; or

562 2. If the power is held jointly with a trustee or another  
563 trust director, as a cotrustee in a like position and under  
564 similar circumstances.

565 (b) The terms of the trust may vary the trust director's  
566 duty or liability to the same extent the terms of the trust may  
567 vary the duty or liability of a trustee in a like position and  
568 under similar circumstances.

569 (2) Unless the terms of a trust provide otherwise, if a  
570 trust director is licensed, certified, or otherwise authorized  
571 or permitted by law other than this part to provide health care  
572 in the ordinary course of the trust director's business or  
573 practice of a profession, to the extent the trust director acts  
574 in that capacity the trust director has no duty or liability  
575 under this part.

576 (3) The terms of a trust may impose a duty or liability on  
577 a trust director in addition to the duties and liabilities under  
578 this section.

579 Section 20. Section 736.1409, Florida Statutes, is created  
580 to read:

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581 736.1409 Duty and liability of directed trustee.-

582 (1) Subject to subsection (2), a directed trustee shall  
583 take reasonable action to comply with a trust director's  
584 exercise or nonexercise of a power of direction or further power  
585 under s. 736.1406(3) (a), relating to additional power granted to  
586 a trust director in furtherance of an express power of  
587 direction, and the trustee is not liable for such reasonable  
588 action.

589 (2) A directed trustee may not comply with a trust  
590 director's exercise or nonexercise of a power of direction or  
591 further power under s. 736.1406(3) (a), relating to additional  
592 power granted to a trust director in furtherance of an express  
593 power of direction, to the extent that by complying the trustee  
594 would engage in willful misconduct.

595 (3) Before complying with a trust director's exercise of a  
596 power of direction, the directed trustee shall determine whether  
597 or not the exercise is within the scope of the trust director's  
598 power of direction. The exercise of a power of direction is not  
599 outside the scope of a trust director's power of direction  
600 merely because the exercise constitutes or may constitute a  
601 breach of trust.

602 (4) An exercise of a power of direction under which a trust  
603 director may release a trustee or another trust director from  
604 liability for breach of trust is not effective if:

605 (a) The breach involved the trustee's or other director's  
606 willful misconduct;

607 (b) The release was induced by improper conduct of the  
608 trustee or other director in procuring the release; or

609 (c) At the time of the release, the trust director did not

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610 know the material facts relating to the breach.

611 (5) A directed trustee that has reasonable doubt about its  
612 duty under this section may apply to the court for instructions,  
613 with attorney fees and costs to be paid from assets of the trust  
614 as provided in this code.

615 (6) The terms of a trust may impose a duty or liability on  
616 a directed trustee in addition to the duties and liabilities  
617 under this part.

618 Section 21. Section 736.141, Florida Statutes, is created  
619 to read:

620 736.141 Duty to provide information.-

621 (1) Subject to s. 736.1411, relating to limitations on the  
622 duties of trustees or trust directors to monitor, inform, or  
623 advise on matters involving the other, a trustee shall provide  
624 information to a trust director to the extent the information is  
625 reasonably related to the powers or duties of the trust  
626 director.

627 (2) Subject to s. 736.1411, relating to limitations on the  
628 duties of trustees or trust directors to monitor, inform, or  
629 advise on matters involving the other, a trust director shall  
630 provide information to a trustee or another trust director to  
631 the extent the information is reasonably related to the powers  
632 or duties of the trustee or other trust director.

633 (3) A trustee that acts in reliance on information provided  
634 by a trust director is not liable for a breach of trust to the  
635 extent the breach resulted from the reliance, unless by so  
636 acting the trustee engages in willful misconduct.

637 (4) A trust director that acts in reliance on information  
638 provided by a trustee or another trust director is not liable

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639 for a breach of trust to the extent the breach resulted from the  
640 reliance, unless by so acting the trust director engages in  
641 willful misconduct.

642 (5) A trust director shall provide information within the  
643 trust director's knowledge or control to a qualified beneficiary  
644 upon a written request of a qualified beneficiary to the extent  
645 the information is reasonably related to the powers or duties of  
646 the trust director.

647 Section 22. Section 736.1411, Florida Statutes, is created  
648 to read:

649 736.1411 No duty to monitor, inform, or advise.-

650 (1) Notwithstanding s. 736.1409(1), relating to the duty of  
651 a directed trustee to take reasonable action when directed and  
652 to the release of liability for such action, unless the terms of  
653 a trust provide otherwise:

654 (a) A trustee does not have a duty to:

655 1. Monitor a trust director; or

656 2. Inform or give advice to a settlor, beneficiary,  
657 trustee, or trust director concerning an instance in which the  
658 trustee might have acted differently than the trust director.

659 (b) By taking an action described in paragraph (a), a  
660 trustee does not assume the duty excluded by paragraph (a).

661 (2) Notwithstanding s. 736.1408(1), relating to the  
662 fiduciary duty of a trust director, unless the terms of a trust  
663 provide otherwise:

664 (a) A trust director does not have a duty to:

665 1. Monitor a trustee or another trust director; or

666 2. Inform or give advice to a settlor, beneficiary,  
667 trustee, or another trust director concerning an instance in

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668 which the trust director might have acted differently than a  
669 trustee or another trust director.

670 (b) By taking an action described in paragraph (a), a trust  
671 director does not assume the duty excluded by paragraph (a).

672 Section 23. Section 736.1412, Florida Statutes, is created  
673 to read:

674 736.1412 Application to cotrustee.—

675 (1) The terms of a trust may provide for the appointment of  
676 more than one trustee but confer upon one or more of the  
677 trustees, to the exclusion of the others, the power to direct or  
678 prevent specified actions of the trustees.

679 (2) The excluded trustees shall act in accordance with the  
680 exercise of the power in the manner, and with the same duty and  
681 liability, as directed trustees with respect to a trust  
682 director's power of direction under s. 736.1409, relating to the  
683 duties and liabilities of a directed trustee; s. 736.141,  
684 relating to the duties of a trustee and trust director to  
685 provide and rely on information; and s. 736.1411, relating to  
686 limitations on the duties of trustees or trust directors to  
687 monitor, inform, or advise on matters involving the other.

688 (3) The trustee or trustees having the power to direct or  
689 prevent actions of the excluded trustees shall be liable to the  
690 beneficiaries with respect to the exercise of the power as if  
691 the excluded trustees were not in office and shall have the  
692 exclusive obligation to account to and to defend any action  
693 brought by the beneficiaries with respect to the exercise of the  
694 power.

695 Section 24. Section 736.1413, Florida Statutes, is created  
696 to read:



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697 736.1413 Limitation of action against trust director.-

698 (1) An action against a trust director for breach of trust  
699 must be commenced within the same limitation period for an  
700 action for breach of trust against a trustee in a like position  
701 and under similar circumstances under s. 736.1008, relating to  
702 limitations on proceedings against trustees.

703 (2) A trust accounting or any other written report of a  
704 trustee or a trust director has the same effect on the  
705 limitation period for an action against a trust director for  
706 breach of trust that such trust accounting or written report  
707 would have under s. 736.1008, relating to limitations on  
708 proceedings against trustees, in an action for breach of trust  
709 against a trustee in a like position and under similar  
710 circumstances.

711 Section 25. Section 736.1414, Florida Statutes, is created  
712 to read:

713 736.1414 Defenses in action against trust director.-In an  
714 action against a trust director for breach of trust, the trust  
715 director may assert the same defenses a trustee in a like  
716 position and under similar circumstances could assert in an  
717 action for breach of trust against the trustee.

718 Section 26. Section 736.1415, Florida Statutes, is created  
719 to read:

720 736.1415 Jurisdiction over trust director.-

721 (1) By accepting appointment as a trust director of a trust  
722 subject to this part, the trust director submits to the personal  
723 jurisdiction of the courts of the state regarding any matter  
724 related to a power or duty of the trust director.

725 (2) This section does not preclude other methods of

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726 obtaining jurisdiction over a trust director.

727 Section 27. Section 736.1416, Florida Statutes, is created  
728 to read:

729 736.1416 Office of trust director.—

730 (1) Unless the terms of a trust provide otherwise, a trust  
731 director shall be considered a trustee for purposes of the  
732 following:

733 (a) Role of court in trust proceedings under s. 736.0201.

734 (b) Proceedings for review of employment of agents and  
735 review of compensation of trustee and employees of a trust under  
736 s. 736.0206.

737 (c) Representation by holder of power of appointment under  
738 s. 736.0302(4), relating to how trustees with discretionary  
739 power to make trust distributions do not have a power of  
740 appointment for purposes of representing persons affected by  
741 such power.

742 (d) Prohibition on a trustee acting as a designated  
743 representative under s. 736.0306(2).

744 (e) Validation of power to select a beneficiary from an  
745 indefinite class under s. 736.0402(3).

746 (f) As to allowing application by the trust director for  
747 judicial modification of a trust when such modification is not  
748 inconsistent with the settlor's purpose under s. 736.04113, for  
749 judicial construction of provisions relating to federal taxes  
750 under s. 736.04114, for judicial modification of a trust when  
751 such modification is in the best interest of the beneficiaries  
752 under s. 736.04115, or for judicial modification or termination  
753 of an uneconomic trust under s. 736.0414(2), if the trust  
754 director is so authorized by the terms of the trust.

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755 (g) Discretionary trusts and the effect of a standard under  
756 s. 736.0504, relating to special provisions regarding  
757 discretionary trusts.

758 (h) Trust assets not being subject to creditor claims by  
759 reason of discretionary powers granted to a trustee under s.  
760 736.0505(1)(c).

761 (i) A trustee's duty to pay trust obligations and expenses  
762 before paying obligations and expenses of the settlor's estate  
763 under s. 736.05053(4).

764 (j) Acceptance or declination of a trusteeship under s.  
765 736.0701.

766 (k) Requirement to give bond to secure performance under  
767 certain circumstances and court discretions relating to such  
768 bonds under s. 736.0702.

769 (l) Filling trustee vacancies and court appointment of an  
770 additional trustee or special fiduciary under s. 736.0704.

771 (m) Resignation of a trustee under s. 736.0705, including  
772 requirements, court authorizations, and remaining liabilities.

773 (n) Court removal of a trustee, including who may request a  
774 removal, under s. 736.0706, but not to give the trust director  
775 the power to request removal of a trustee.

776 (o) Reasonable compensation of a trustee or professional  
777 acting as a trustee under s. 736.0708.

778 (p) Entitlement of a trustee to reimbursement of expenses  
779 and liens to secure advances under s. 736.0709.

780 (q) Authority to pay costs or attorney fees without  
781 approval under s. 736.0802(10), if the trust director has a  
782 power of direction or, if the trust director has a further power  
783 to direct, the payment of such costs or attorney fees under s.

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784 736.1406(2), relating to the explicit power of direction granted  
785 to a trust director, or s. 736.1406(3)(a), relating to the  
786 implied additional power of a director in furtherance of an  
787 express power of direction.

788 (r) Limitations on a trustee's discretionary powers under  
789 s. 736.0814.

790 (s) Administration of trusts by trustees without regard to  
791 pending contests or proceedings, except as the court directs,  
792 under s. 736.08165.

793 (t) A trustee's obligation to invest in accordance with  
794 chapter 518 under s. 736.0901.

795 (u) The exception to the prudent investor rule for life  
796 insurance under s. 736.0902.

797 (v) Remedies available for a trustee breach of trust under  
798 s. 736.1001.

799 (w) Damages against a trustee for breach of trust under s.  
800 736.1002.

801 (x) A trustee's immunity from liability for loss or no  
802 profit under s. 736.1003 if there is no breach of trust.

803 (y) Court-awarded attorney fees and costs under s. 736.1004  
804 for breach of trust challenges.

805 (z) Fees available to a trustee's attorney for  
806 extraordinary service under s. 736.1007(5), court variance of  
807 compensation for a trustee's attorney under s. 736.1007(6), and  
808 agreements between a settlor and an attorney for fees to be  
809 provided to a trustee under s. 736.1007(7).

810 (aa) A trustee's immunity from liability for a breach of  
811 trust under s. 736.1009 if the trustee relied on the trust  
812 instrument terms.

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813 (bb) Limitations on a trustee's liability for acting  
814 without knowledge of relevant events under s. 736.1010.

815 (cc) Limitations on a trustee's exculpation of liability  
816 under the terms of a trust under s. 736.1011.

817 (dd) The release of a trustee from liability with consent,  
818 the release or ratification of a beneficiary, and the  
819 limitations on such actions under s. 736.1012.

820 (ee) Limitations on imposing liability on a trustee for  
821 obligations of a settlor under s. 736.1014.

822 (2) If a person has not accepted a trust directorship under  
823 the terms of the trust or has accepted or declined a trusteeship  
824 under s. 736.0701 or a trustee, settlor, or a qualified  
825 beneficiary of the trust is uncertain whether such acceptance  
826 has occurred, a trustee, settlor, or a qualified beneficiary of  
827 the trust may make a written demand on a person designated to  
828 serve as a trust director, with a written copy to the trustees,  
829 to accept or confirm prior acceptance of the trust directorship  
830 in writing. A written acceptance, written acknowledgment of  
831 prior acceptance, or written declination of the trust  
832 directorship shall be delivered by the designated trust director  
833 within 60 days after receipt of such demand to all trustees,  
834 qualified beneficiaries, and the settlor if living.

835 Section 28. Part XV of chapter 736, Florida Statutes,  
836 consisting of ss. 736.1501-736.1512, Florida Statutes, is  
837 created and entitled the "Community Property Trust Act."

838 Section 29. Section 736.1501, Florida Statutes, is created  
839 to read:

840 736.1501 Short title.—This part may be cited as the  
841 "Community Property Trust Act."

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842 Section 30. Section 736.1502, Florida Statutes, is created  
843 to read:

844 736.1502 Definitions.—Unless the context otherwise  
845 requires, as used in this part:

846 (1) "Community property" means the property and the  
847 appreciation of and income from the property owned by a  
848 qualified trustee of a community property trust during the  
849 marriage of the settlor spouses. The property owned by a  
850 community property trust pursuant to this part and the  
851 appreciation of and income from such property shall be deemed to  
852 be community property for purposes of general law.

853 (2) "Community property trust" means an express trust that  
854 complies with s. 736.1503 and is created on or after July 1,  
855 2021.

856 (3) "Decree" means a judgment or other order of a court of  
857 competent jurisdiction.

858 (4) "Dissolution" means either:

859 (a) Termination of a marriage by a decree of dissolution,  
860 divorce, annulment, or declaration of invalidity; or

861 (b) Entry of a decree of legal separation maintenance.

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

865 (6) "Qualified trustee" means either:

866 (a) A natural person who is a resident of the state; or

867 (b) A company authorized to act as a trustee in the state.

868

869 A qualified trustee's powers include, but are not limited to,  
870 maintaining records for the trust on an exclusive or a

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871 nonexclusive basis and preparing or arranging for the  
872 preparation of, on an exclusive or a nonexclusive basis, any  
873 income tax returns that must be filed by the trust.

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

876 Section 31. Section 736.1503, Florida Statutes, is created  
877 to read:

878 736.1503 Requirements for community property trust.—An  
879 arrangement is a community property trust if one or both settlor  
880 spouses transfer property to a trust that:

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

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

886 (3) Is signed by both settlor spouses consistent with the  
887 formalities required for the execution of a trust under this  
888 chapter.

889 (4) Contains substantially the following language in  
890 capital letters at the beginning of the community property trust  
891 agreement:

892  
893 THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY  
894 BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR  
895 RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD  
896 PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE  
897 COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND  
898 UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,  
899 THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER

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900       CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT  
901       THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND  
902       INDEPENDENT LEGAL ADVICE.

903  
904       Section 32. Section 736.1504, Florida Statutes, is created  
905       to read:

906       736.1504 Agreement establishing community property trust;  
907       amendments and revocation.-

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

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

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

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

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

919       (e) Any other matter that affects the property transferred  
920       to the trust and does not violate public policy or general law  
921       imposing a criminal penalty, or result in the property not being  
922       treated as community property under the laws of any  
923       jurisdiction.

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



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

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

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

942 736.1505 Classification of property as community property;  
943 enforcement; duration; management and control; effect of  
944 distributions.—

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

950 (2) A community property trust is enforceable without  
951 consideration.

952 (3) All property owned by a community property trust is  
953 community property under the laws of the state during the  
954 marriage of the settlor spouses.

955 (4) The right to manage and control property that is  
956 transferred to a community property trust is determined by the  
957 terms of the trust agreement.

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958       (5) When property is distributed from a community property  
959 trust, the property shall no longer constitute community  
960 property within the meaning of this part, provided that  
961 community property as classified by a jurisdiction other than  
962 the state retains its character as community property to the  
963 extent otherwise provided by ss. 732.216-732.228.

964       Section 34. Section 736.1506, Florida Statutes, is created  
965 to read:

966       736.1506 Satisfaction of obligations.—Except as provided in  
967 s. 4, Art. X of the State Constitution:

968       (1) An obligation incurred by only one spouse before or  
969 during the marriage may be satisfied from that spouse's one-half  
970 share of a community property trust.

971       (2) An obligation incurred by both spouses during the  
972 marriage may be satisfied from a community property trust of the  
973 settlor spouses.

974       Section 35. Section 736.1507, Florida Statutes, is created  
975 to read:

976       736.1507 Death of a spouse.—Upon the death of a spouse,  
977 one-half of the aggregate value of the property held in a  
978 community property trust established by the settlor spouses  
979 reflects the share of the surviving spouse and is not subject to  
980 testamentary disposition by the decedent spouse or distribution  
981 under the laws of succession of the state. The other one-half of  
982 the value of that property reflects the share of the decedent  
983 spouse and is subject to testamentary disposition or  
984 distribution under the laws of succession of the state. Unless  
985 provided otherwise in the community property trust agreement,  
986 the trustee has the power to distribute assets of the trust in

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987 divided or undivided interests and to adjust resulting  
988 differences in valuation. A distribution in kind may be made on  
989 the basis of a non-pro rata division of the aggregate value of  
990 the trust assets, on the basis of a pro rata division of each  
991 individual asset, or by using both methods. The decedent's  
992 spouse's one-half share shall not be included in the elective  
993 estate.

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

996 736.1508 Dissolution of marriage.—Upon the dissolution of  
997 the marriage of the settlor spouses, the community property  
998 trust shall terminate and the trustee shall distribute one-half  
999 of the trust assets to each spouse, with each spouse receiving  
1000 one-half of each asset, unless otherwise agreed to in writing by  
1001 both spouses. For purposes of this act, s. 61.075 does not apply  
1002 to the disposition of the assets and liabilities held in a  
1003 community property trust.

1004 Section 37. Section 736.1509, Florida Statutes, is created  
1005 to read:

1006 736.1509 Right of child to support.—A community property  
1007 trust does not adversely affect the right of a child of the  
1008 settlor spouses to support that either spouse would be required  
1009 to give under the applicable laws of the settlor spouses' state  
1010 of domicile.

1011 Section 38. Section 736.151, Florida Statutes, is created  
1012 to read:

1013 736.151 Homestead property.—

1014 (1) Property that is transferred to or acquired subject to  
1015 a community property trust may continue to qualify or may

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1016 initially qualify as the settlor spouses' homestead within the  
1017 meaning of s. 4(a)(1), Art. X of the State Constitution and for  
1018 all purposes of general law, provided that the property would  
1019 qualify as the settlor spouses' homestead if title was held in  
1020 one or both of the settlor spouses' individual names.

1021 (2) The settlor spouses shall be deemed to have beneficial  
1022 title in equity to the homestead property held subject to a  
1023 community property trust for all purposes, including for  
1024 purposes of s. 196.031.

1025 Section 39. Section 736.1511, Florida Statutes, is created  
1026 to read:

1027 736.1511 Application of Internal Revenue Code; community  
1028 property classified by another jurisdiction.—For purposes of the  
1029 application of s. 1014(b)(6) of the Internal Revenue Code of  
1030 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a  
1031 community property trust is considered a trust established under  
1032 the community property laws of the state. Community property, as  
1033 classified by a jurisdiction other than this state, which is  
1034 transferred to a community property trust retains its character  
1035 as community property while in the trust. If the trust is  
1036 revoked and property is transferred on revocation of the trust,  
1037 the community property as classified by a jurisdiction other  
1038 than the state retains its character as community property to  
1039 the extent otherwise provided by ss. 732.216-732.228.

1040 Section 40. Section 736.1512, Florida Statutes, is created  
1041 to read:

1042 736.1512 Unenforceable trusts.—

1043 (1) A community property trust executed during marriage is  
1044 not enforceable if the spouse against whom enforcement is sought

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1045 proves that:

1046 (a) The trust was unconscionable when made;

1047 (b) The spouse against whom enforcement is sought did not  
1048 execute the community property trust agreement voluntarily; or

1049 (c) Before execution of the community property trust  
1050 agreement, the spouse against whom enforcement is sought:

1051 1. Was not given a fair and reasonable disclosure of the  
1052 property and financial obligations of the other spouse.

1053 2. Did not voluntarily sign a written waiver expressly  
1054 waiving right to disclosure of the property and financial  
1055 obligations of the other spouse beyond the disclosure provided.

1056 3. Did not have notice of the property or financial  
1057 obligations of the other spouse.

1058 (2) Whether a community property trust is unconscionable  
1059 shall be determined by a court as a matter of law.

1060 (3) A community property trust may not be deemed  
1061 unenforceable because the settlor spouses did not have separate  
1062 legal representation when executing the trust.

1063 Section 41. Paragraph (f) of subsection (5) of section  
1064 736.0802, Florida Statutes, is amended to read:

1065 736.0802 Duty of loyalty.—

1066 (5)

1067 (f)1. The trustee of a trust as defined in s. 731.201 may  
1068 request authority to invest in investment instruments described  
1069 in this subsection other than a qualified investment instrument,  
1070 by providing to all qualified beneficiaries a written request  
1071 containing the following:

1072 a. The name, telephone number, street address, and mailing  
1073 address of the trustee and of any individuals who may be

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1074 contacted for further information.

1075 b. A statement that the investment or investments cannot be  
1076 made without the consent of a majority of each class of the  
1077 qualified beneficiaries.

1078 c. A statement that, if a majority of each class of  
1079 qualified beneficiaries consent, the trustee will have the right  
1080 to make investments in investment instruments, as defined in s.  
1081 660.25(6), which are owned or controlled by the trustee or its  
1082 affiliate, or from which the trustee or its affiliate receives  
1083 compensation for providing services in a capacity other than as  
1084 trustee, that such investment instruments may include investment  
1085 instruments sold primarily to trust accounts, and that the  
1086 trustee or its affiliate may receive fees in addition to the  
1087 trustee's compensation for administering the trust.

1088 d. A statement that the consent may be withdrawn  
1089 prospectively at any time by written notice given by a majority  
1090 of any class of the qualified beneficiaries.

1091  
1092 A statement by the trustee is not delivered if the statement is  
1093 accompanied by another written communication other than a  
1094 written communication by the trustee that refers only to the  
1095 statement.

1096 2. For purposes of paragraph (e) and this paragraph:

1097 a. "Majority of the qualified beneficiaries" means:

1098 (I) If at the time the determination is made there are one  
1099 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~  
1100 ~~736.0103(16)(e)~~, at least a majority in interest of the  
1101 beneficiaries described in s. 736.0103(19)(a) ~~s.~~  
1102 ~~736.0103(16)(a)~~, at least a majority in interest of the

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1103 beneficiaries described in s. 736.0103(19)(b) ~~s.~~  
1104 ~~736.0103(16)(b)~~, and at least a majority in interest of the  
1105 beneficiaries described in s. 736.0103(19)(c) ~~s.~~  
1106 ~~736.0103(16)(e)~~, if the interests of the beneficiaries are  
1107 reasonably ascertainable; otherwise, a majority in number of  
1108 each such class; or

1109 (II) If there is no beneficiary as described in s.  
1110 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least a majority in  
1111 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~  
1112 ~~736.0103(16)(a)~~ and at least a majority in interest of the  
1113 beneficiaries described in s. 736.0103(19)(b) ~~s.~~  
1114 ~~736.0103(16)(b)~~, if the interests of the beneficiaries are  
1115 reasonably ascertainable; otherwise, a majority in number of  
1116 each such class.

1117 b. "Qualified investment instrument" means a mutual fund,  
1118 common trust fund, or money market fund described in and  
1119 governed by s. 736.0816(3).

1120 c. An irrevocable trust is created upon execution of the  
1121 trust instrument. If a trust that was revocable when created  
1122 thereafter becomes irrevocable, the irrevocable trust is created  
1123 when the right of revocation terminates.

1124 Section 42. Paragraph (a) of subsection (2) of section  
1125 736.08125, Florida Statutes, is amended to read:

1126 736.08125 Protection of successor trustees.—

1127 (2) For the purposes of this section, the term:

1128 (a) "Eligible beneficiaries" means:

1129 1. At the time the determination is made, if there are one  
1130 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~  
1131 ~~736.0103(16)(e)~~, the beneficiaries described in s.

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1132 736.0103(19) (a) and (c) ~~s. 736.0103(16) (a) and (e)~~; or

1133 2. If there is no beneficiary as described in s.  
1134 736.0103(19) (c) ~~s. 736.0103(16) (e)~~, the beneficiaries described  
1135 in s. 736.0103(19) (a) and (b) ~~s. 736.0103(16) (a) and (b)~~.

1136 Section 43. Paragraph (d) of subsection (9) of section  
1137 738.104, Florida Statutes, is amended to read:

1138 738.104 Trustee's power to adjust.—

1139 (9)

1140 (d) For purposes of subsection (8) and this subsection, the  
1141 term:

1142 1. "Eligible beneficiaries" means:

1143 a. If at the time the determination is made there are one  
1144 or more beneficiaries described in s. 736.0103(19) (c) ~~s.~~  
1145 ~~736.0103(16) (e)~~, the beneficiaries described in s.  
1146 736.0103(19) (a) and (c) ~~s. 736.0103(16) (a) and (e)~~; or

1147 b. If there is no beneficiary described in s.  
1148 736.0103(19) (c) ~~s. 736.0103(16) (e)~~, the beneficiaries described  
1149 in s. 736.0103(19) (a) and (b) ~~s. 736.0103(16) (a) and (b)~~.

1150 2. "Super majority of the eligible beneficiaries" means:

1151 a. If at the time the determination is made there are one  
1152 or more beneficiaries described in s. 736.0103(19) (c) ~~s.~~  
1153 ~~736.0103(16) (e)~~, at least two-thirds in interest of the  
1154 beneficiaries described in s. 736.0103(19) (a) ~~s. 736.0103(16) (a)~~  
1155 or two-thirds in interest of the beneficiaries described in s.  
1156 736.0103(19) (c) ~~s. 736.0103(16) (e)~~, if the interests of the  
1157 beneficiaries are reasonably ascertainable; otherwise, it means  
1158 two-thirds in number of either such class; or

1159 b. If there is no beneficiary described in s.  
1160 736.0103(19) (c) ~~s. 736.0103(16) (e)~~, at least two-thirds in



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1161 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~  
1162 ~~736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries  
1163 described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the  
1164 interests of the beneficiaries are reasonably ascertainable,  
1165 otherwise, two-thirds in number of either such class.

1166 Section 44. Subsection (1) of section 744.3679, Florida  
1167 Statutes, is amended to read:

1168 744.3679 Simplified accounting procedures in certain  
1169 cases.—

1170 (1) In a guardianship of property, when all property assets  
1171 of the estate is ~~are~~ in designated depositories under s. 69.031  
1172 and the only transactions that occur in that account are  
1173 interest accrual, deposits from a settlement, or financial  
1174 institution service charges, the guardian may elect to file an  
1175 accounting consisting of:

1176 (a) The original or a certified copy of the year-end  
1177 statement of the ward's account from the financial institution;  
1178 and

1179 (b) A statement by the guardian under penalty of perjury  
1180 that the guardian has custody and control of the ward's property  
1181 as shown in the year-end statement.

1182 Section 45. The Division of Law Revision is directed to  
1183 replace the phrase "the effective date of this section" wherever  
1184 it occurs in this act with the date those sections become law.

1185 Section 46. If any provision of this act or the application  
1186 thereof to any person or circumstance is held invalid, the  
1187 invalidity does not affect other provisions or applications of  
1188 this act which can be given effect without the invalid provision  
1189 or application, and to this end the provisions of this act are

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1190 severable.

1191       Section 47. Except as otherwise expressly provided in this  
1192 act and except for this section, which shall take effect upon  
1193 this act becoming a law, this act shall take effect July 1,  
1194 2021.