

20211070er

1
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 trustee
28 or trust director; conforming provisions to changes
29 made by the act; amending s. 736.1017, F.S.; revising

20211070er

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

20211070er

59 a trust director; requiring a trust director to
60 provide certain information to a trustee or another
61 trust director and a qualified beneficiary; providing
62 that a trustee or a trust director acting in reliance
63 on 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 ch. 736, F.S., entitled the "Community Property Trust
83 Act"; creating s. 736.1501, F.S.; providing a short
84 title; creating s. 736.1502, F.S.; defining terms;
85 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

20211070er

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

20211070er

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

20211070er

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

20211070er

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 divorcee
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

20211070er

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,

20211070er

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

20211070er

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:

20211070er

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~~

20211070er

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

20211070er

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

20211070er

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

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

385 736.1017 Certification of trust.—

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

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

396 Section 11. Effective upon this act becoming a law, section
397 736.1105, Florida Statutes, is amended to read:

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

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

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

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

20211070er

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

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

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

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

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

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

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

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

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

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

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

20211070er

436 736.05053.

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

443 (4) This section applies only to trusts described in s.
444 733.707(3) and to testamentary trusts.

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

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

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

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

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

457 736.1403 Application; principal place of administration.—

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

461 (a) If the trust was created before July 1, 2021, this part
462 applies only to a decision or action occurring on or after July
463 1, 2021.

464 (b) If the principal place of administration of the trust

20211070er

465 is changed to the state on or after July 1, 2021, this part
466 applies only to a decision or action occurring on or after the
467 date of the change.

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

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

476 736.1405 Exclusions.—

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

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

484 (a) A power of appointment;

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

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

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

492 1. The beneficiary; or

493 2. Another beneficiary represented by the beneficiary under

20211070er

494 ss. 736.0301-736.0305 with respect to the exercise or
495 nonexercise of the power;

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

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

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

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

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

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

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

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

20211070er

523 736.1406 Power of trust director.—

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

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

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

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

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

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

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

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

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

20211070er

552 Section 19. Section 736.1408, Florida Statutes, is created
553 to read:

554 736.1408 Duty and liability of trust director.-

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

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

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

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

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

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

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

580 Section 20. Section 736.1409, Florida Statutes, is created

20211070er

581 to read:

582 736.1409 Duty and liability of directed trustee.—

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

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

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

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

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

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

20211070er

610 (c) At the time of the release, the trust director did not
611 know the material facts relating to the breach.

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

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

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

621 736.141 Duty to provide information.—

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

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

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

638 (4) A trust director that acts in reliance on information

20211070er

639 provided by a trustee or another trust director is not liable
640 for a breach of trust to the extent the breach resulted from the
641 reliance, unless by so acting the trust director engages in
642 willful misconduct.

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

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

650 736.1411 No duty to monitor, inform, or advise.-

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

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

656 1. Monitor a trust director; or

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

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

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

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

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

667 2. Inform or give advice to a settlor, beneficiary,

20211070er

668 trustee, or another trust director concerning an instance in
669 which the trust director might have acted differently than a
670 trustee or another trust director.

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

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

675 736.1412 Application to cotrustee.—

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

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

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

696 Section 24. Section 736.1413, Florida Statutes, is created

20211070er

697 to read:

698 736.1413 Limitation of action against trust director.—

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

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

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

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

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

721 736.1415 Jurisdiction over trust director.—

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

20211070er

726 (2) This section does not preclude other methods of
727 obtaining jurisdiction over a trust director.

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

730 736.1416 Office of trust director.—

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

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

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

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

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

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

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

20211070er

755 director is so authorized by the terms of the trust.

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

759 (h) Trust assets not being subject to creditor claims by
760 reason of discretionary powers granted to a trustee under s.
761 736.0505(1)(c).

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

765 (j) Acceptance or declination of a trusteeship under s.
766 736.0701.

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

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

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

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

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

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

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

20211070er

784 to direct, the payment of such costs or attorney fees under s.
785 736.1406(2), relating to the explicit power of direction granted
786 to a trust director, or s. 736.1406(3)(a), relating to the
787 implied additional power of a director in furtherance of an
788 express power of direction.

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

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

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

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

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

800 (w) Damages against a trustee for breach of trust under s.
801 736.1002.

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

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

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

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

20211070er

813 instrument terms.

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

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

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

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

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

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

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

841 736.1501 Short title.—This part may be cited as the

20211070er

842 "Community Property Trust Act."

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

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

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

854 (2) "Community property trust" means an express trust that
855 complies with s. 736.1503 and is created on or after July 1,
856 2021.

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

859 (4) "Dissolution" means either:

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

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

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

868 (6) "Qualified trustee" means either:

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

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

20211070er

871
872 A qualified trustee's powers include, but are not limited to,
873 maintaining records for the trust on an exclusive or a
874 nonexclusive basis and preparing or arranging for the
875 preparation of, on an exclusive or a nonexclusive basis, any
876 income tax returns that must be filed by the trust.

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

879 Section 31. Section 736.1503, Florida Statutes, is created
880 to read:

881 736.1503 Requirements for community property trust.—An
882 arrangement is a community property trust if one or both settlor
883 spouses transfer property to a trust that:

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

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

889 (3) Is signed by both settlor spouses consistent with the
890 formalities required for the execution of a trust under this
891 chapter.

892 (4) Contains substantially the following language in
893 capital letters at the beginning of the community property trust
894 agreement:

895
896 THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY
897 BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR
898 RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD
899 PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE

20211070er

900 COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND
901 UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,
902 THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER
903 CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT
904 THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND
905 INDEPENDENT LEGAL ADVICE. ALTHOUGH NOT A REQUIREMENT,
906 IT IS STRONGLY ADVISABLE THAT EACH SPOUSE OBTAIN THEIR
907 OWN SEPARATE LEGAL COUNSEL PRIOR TO THE EXECUTION OF
908 THIS TRUST.

909
910 Section 32. Section 736.1504, Florida Statutes, is created
911 to read:

912 736.1504 Agreement establishing community property trust;
913 amendments and revocation.—

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

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

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

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

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

925 (e) Any other matter that affects the property transferred
926 to the trust and does not violate public policy or general law
927 imposing a criminal penalty, or result in the property not being
928 treated as community property under the laws of a relevant

20211070er

929 jurisdiction.

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

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

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

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

948 736.1505 Classification of property as community property;
949 enforcement; duration; management and control; effect of
950 distributions.-

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

956 (2) A community property trust is enforceable without
957 consideration.

20211070er

958 (3) All property owned by a community property trust is
959 community property under the laws of the state during the
960 marriage of the settlor spouses.

961 (4) The right to manage and control property that is
962 transferred to a community property trust is determined by the
963 terms of the trust agreement.

964 (5) When property is distributed from a community property
965 trust, the property shall no longer constitute community
966 property within the meaning of this part, provided that
967 community property as classified by a jurisdiction other than
968 the state retains its character as community property to the
969 extent otherwise provided by ss. 732.216-732.228.

970 Section 34. Section 736.1506, Florida Statutes, is created
971 to read:

972 736.1506 Satisfaction of obligations.—Except as provided in
973 s. 4, Art. X of the State Constitution:

974 (1) An obligation solely incurred by one settlor spouse
975 before or during the marriage may be satisfied from that settlor
976 spouse's one-half share of a community property trust, unless a
977 greater amount is otherwise provided in the community property
978 trust agreement.

979 (2) An obligation incurred by both spouses during the
980 marriage may be satisfied from a community property trust of the
981 settlor spouses.

982 Section 35. Section 736.1507, Florida Statutes, is created
983 to read:

984 736.1507 Death of a spouse.—Upon the death of a spouse,
985 one-half of the aggregate value of the property held in a
986 community property trust established by the settlor spouses

20211070er

987 reflects the share of the surviving spouse and is not subject to
988 testamentary disposition by the decedent spouse or distribution
989 under the laws of succession of the state. The other one-half of
990 the value of that property reflects the share of the decedent
991 spouse and is subject to testamentary disposition or
992 distribution under the laws of succession of the state. Unless
993 provided otherwise in the community property trust agreement,
994 the trustee has the power to distribute assets of the trust in
995 divided or undivided interests and to adjust resulting
996 differences in valuation. A distribution in kind may be made on
997 the basis of a non-pro rata division of the aggregate value of
998 the trust assets, on the basis of a pro rata division of each
999 individual asset, or by using both methods. The decedent's
1000 spouse's one-half share shall not be included in the elective
1001 estate.

1002 Section 36. Section 736.1508, Florida Statutes, is created
1003 to read:

1004 736.1508 Dissolution of marriage.-

1005 (1) Upon the dissolution of the marriage of the settlor
1006 spouses, the community property trust shall terminate and the
1007 trustee shall distribute one-half of the trust assets to each
1008 spouse in accordance with subsection (3). For purposes of this
1009 act, s. 61.075 does not apply to the disposition of the assets
1010 and liabilities held in a community property trust.

1011 (2) The initiation of an action to dissolve the settlor
1012 spouses' marriage does not automatically terminate the community
1013 property trust unless otherwise agreed to by the settlor spouses
1014 in writing or otherwise ordered by the court having jurisdiction
1015 over the dissolution proceedings between the settlor spouses.

20211070er

1016 However, if an action to dissolve the settlor spouses' marriage
1017 remains pending for 180 days, the trust automatically terminates
1018 and the trustee must distribute one-half of the trust assets to
1019 each spouse in accordance with subsection (3), unless any of the
1020 following apply:

1021 (a) A settlor spouse objects to the termination within 180
1022 days following the filing of the dissolution action. At which
1023 time, either party may request that the court having
1024 jurisdiction over the dissolution proceedings between the
1025 settlor spouses determine if good cause exists to terminate the
1026 community property trust during the pendency of the dissolution
1027 of marriage action.

1028 (b) The court having jurisdiction over the dissolution
1029 proceedings between the settlor spouses enters an order
1030 directing otherwise.

1031 (c) The settlor spouses otherwise agree, in writing, while
1032 the dissolution of marriage action is pending.

1033 (d) The community property trust agreement provides
1034 otherwise.

1035 (3) Unless provided otherwise in the community property
1036 trust agreement, the trustee has the power to distribute assets
1037 of the trust in divided or undivided interests and to adjust
1038 resulting differences in valuation. A distribution in kind may
1039 be made on the basis of a non-pro rata division of the aggregate
1040 value of the trust assets, on the basis of a pro rata division
1041 of each individual asset, or by using both methods. A trustee
1042 may not distribute real property or business interests in a
1043 manner that would leave the settlor spouses as co-owners of such
1044 assets post dissolution of the settlor spouses' marriage or

20211070er

1045 termination of the community property trust, unless otherwise
1046 agreed to by the settlor spouses in a separate written agreement
1047 executed during the dissolution of marriage action.

1048 Notwithstanding any other provision of this section, the
1049 community property trust agreement cannot be terminated, and the
1050 assets cannot be distributed, in a manner that could cause the
1051 trust assets to not be treated as community property.

1052 (4) The court having jurisdiction over the dissolution
1053 proceedings between the settlor spouses has personal and subject
1054 matter jurisdiction over the settlor spouses and the trustee of
1055 the community property trust for the purpose of effectuating the
1056 distribution of the community property trust assets consistent
1057 with the terms of the community property trust agreement, in a
1058 manner ensuring that the trust assets retain their community
1059 property character.

1060 Section 37. Section 736.1509, Florida Statutes, is created
1061 to read:

1062 736.1509 Right of child to support.—A community property
1063 trust does not adversely affect the right of a child of the
1064 settlor spouses to support, pursuant to s. 61.30 or the
1065 applicable law of another jurisdiction, that either spouse would
1066 be required to give under the applicable laws of the settlor
1067 spouses' state of domicile.

1068 Section 38. Section 736.151, Florida Statutes, is created
1069 to read:

1070 736.151 Homestead property.—

1071 (1) Property that is transferred to or acquired subject to
1072 a community property trust may continue to qualify or may
1073 initially qualify as the settlor spouses' homestead within the

20211070er

1074 meaning of s. 4(a)(1), Art. X of the State Constitution and for
1075 all purposes of general law, provided that the property would
1076 qualify as the settlor spouses' homestead if title was held in
1077 one or both of the settlor spouses' individual names.

1078 (2) The settlor spouses shall be deemed to have beneficial
1079 title in equity to the homestead property held subject to a
1080 community property trust for all purposes, including for
1081 purposes of s. 196.031.

1082 Section 39. Section 736.1511, Florida Statutes, is created
1083 to read:

1084 736.1511 Application of Internal Revenue Code; community
1085 property classified by another jurisdiction.—For purposes of the
1086 application of s. 1014(b)(6) of the Internal Revenue Code of
1087 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a
1088 community property trust is considered a trust established under
1089 the community property laws of the state. Community property, as
1090 classified by a jurisdiction other than this state, which is
1091 transferred to a community property trust retains its character
1092 as community property while in the trust. If the trust is
1093 revoked and property is transferred on revocation of the trust,
1094 the community property as classified by a jurisdiction other
1095 than the state retains its character as community property to
1096 the extent otherwise provided by ss. 732.216-732.228.

1097 Section 40. Section 736.1512, Florida Statutes, is created
1098 to read:

1099 736.1512 Unenforceable trusts.—

1100 (1) A community property trust executed during marriage is
1101 not enforceable if the spouse against whom enforcement is sought
1102 proves that:

20211070er

1103 (a) The trust was unconscionable when made;
1104 (b) The spouse against whom enforcement is sought did not
1105 execute the community property trust agreement voluntarily;
1106 (c) The community property trust agreement was the product
1107 of fraud, duress, coercion, or overreaching; or
1108 (d) Before execution of the community property trust
1109 agreement, the spouse against whom enforcement is sought:
1110 1. Was not given a fair and reasonable disclosure of the
1111 property and financial obligations of the other spouse.
1112 2. Did not voluntarily sign a written waiver expressly
1113 waiving right to disclosure of the property and financial
1114 obligations of the other spouse beyond the disclosure provided.
1115 3. Did not have notice of the property or financial
1116 obligations of the other spouse.
1117 (2) Whether a community property trust is unconscionable
1118 shall be determined by a court as a matter of law.
1119 (3) A community property trust may not be deemed
1120 unenforceable solely on the fact that the settlor spouses did
1121 not have separate legal representation when executing the
1122 community property trust agreement.
1123 Section 41. Paragraph (f) of subsection (5) of section
1124 736.0802, Florida Statutes, is amended to read:
1125 736.0802 Duty of loyalty.—
1126 (5)
1127 (f)1. The trustee of a trust as defined in s. 731.201 may
1128 request authority to invest in investment instruments described
1129 in this subsection other than a qualified investment instrument,
1130 by providing to all qualified beneficiaries a written request
1131 containing the following:

20211070er

1132 a. The name, telephone number, street address, and mailing
1133 address of the trustee and of any individuals who may be
1134 contacted for further information.

1135 b. A statement that the investment or investments cannot be
1136 made without the consent of a majority of each class of the
1137 qualified beneficiaries.

1138 c. A statement that, if a majority of each class of
1139 qualified beneficiaries consent, the trustee will have the right
1140 to make investments in investment instruments, as defined in s.
1141 660.25(6), which are owned or controlled by the trustee or its
1142 affiliate, or from which the trustee or its affiliate receives
1143 compensation for providing services in a capacity other than as
1144 trustee, that such investment instruments may include investment
1145 instruments sold primarily to trust accounts, and that the
1146 trustee or its affiliate may receive fees in addition to the
1147 trustee's compensation for administering the trust.

1148 d. A statement that the consent may be withdrawn
1149 prospectively at any time by written notice given by a majority
1150 of any class of the qualified beneficiaries.

1151
1152 A statement by the trustee is not delivered if the statement is
1153 accompanied by another written communication other than a
1154 written communication by the trustee that refers only to the
1155 statement.

1156 2. For purposes of paragraph (e) and this paragraph:

1157 a. "Majority of the qualified beneficiaries" means:

1158 (I) If at the time the determination is made there are one
1159 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~
1160 ~~736.0103(16)(e)~~, at least a majority in interest of the

20211070er

1161 beneficiaries described in s. 736.0103(19) (a) ~~s.~~
1162 ~~736.0103(16) (a)~~, at least a majority in interest of the
1163 beneficiaries described in s. 736.0103(19) (b) ~~s.~~
1164 ~~736.0103(16) (b)~~, and at least a majority in interest of the
1165 beneficiaries described in s. 736.0103(19) (c) ~~s.~~
1166 ~~736.0103(16) (c)~~, if the interests of the beneficiaries are
1167 reasonably ascertainable; otherwise, a majority in number of
1168 each such class; or

1169 (II) If there is no beneficiary as described in s.
1170 736.0103(19) (c) ~~s. 736.0103(16) (c)~~, at least a majority in
1171 interest of the beneficiaries described in s. 736.0103(19) (a) ~~s.~~
1172 ~~736.0103(16) (a)~~ and at least a majority in interest of the
1173 beneficiaries described in s. 736.0103(19) (b) ~~s.~~
1174 ~~736.0103(16) (b)~~, if the interests of the beneficiaries are
1175 reasonably ascertainable; otherwise, a majority in number of
1176 each such class.

1177 b. "Qualified investment instrument" means a mutual fund,
1178 common trust fund, or money market fund described in and
1179 governed by s. 736.0816(3).

1180 c. An irrevocable trust is created upon execution of the
1181 trust instrument. If a trust that was revocable when created
1182 thereafter becomes irrevocable, the irrevocable trust is created
1183 when the right of revocation terminates.

1184 Section 42. Paragraph (a) of subsection (2) of section
1185 736.08125, Florida Statutes, is amended to read:

1186 736.08125 Protection of successor trustees.—

1187 (2) For the purposes of this section, the term:

1188 (a) "Eligible beneficiaries" means:

1189 1. At the time the determination is made, if there are one

20211070er

1190 or more beneficiaries as described in s. 736.0103(19)(c) s.
1191 ~~736.0103(16)(e)~~, the beneficiaries described in s.
1192 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

1193 2. If there is no beneficiary as described in s.
1194 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described
1195 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1196 Section 43. Paragraph (d) of subsection (9) of section
1197 738.104, Florida Statutes, is amended to read:

1198 738.104 Trustee's power to adjust.—

1199 (9)

1200 (d) For purposes of subsection (8) and this subsection, the
1201 term:

1202 1. "Eligible beneficiaries" means:

1203 a. If at the time the determination is made there are one
1204 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~

1205 ~~736.0103(16)(e)~~, the beneficiaries described in s.
1206 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

1207 b. If there is no beneficiary described in s.
1208 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described
1209 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1210 2. "Super majority of the eligible beneficiaries" means:

1211 a. If at the time the determination is made there are one
1212 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~
1213 ~~736.0103(16)(e)~~, at least two-thirds in interest of the
1214 beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~
1215 or two-thirds in interest of the beneficiaries described in s.
1216 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, if the interests of the
1217 beneficiaries are reasonably ascertainable; otherwise, it means
1218 two-thirds in number of either such class; or

20211070er

1219 b. If there is no beneficiary described in s.
1220 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least two-thirds in
1221 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~
1222 ~~736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries
1223 described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the
1224 interests of the beneficiaries are reasonably ascertainable,
1225 otherwise, two-thirds in number of either such class.

1226 Section 44. Subsection (1) of section 744.3679, Florida
1227 Statutes, is amended to read:

1228 744.3679 Simplified accounting procedures in certain
1229 cases.—

1230 (1) In a guardianship of property, when all property assets
1231 of the estate is ~~are~~ in designated depositories under s. 69.031
1232 and the only transactions that occur in that account are
1233 interest accrual, deposits from a settlement, or financial
1234 institution service charges, the guardian may elect to file an
1235 accounting consisting of:

1236 (a) The original or a certified copy of the year-end
1237 statement of the ward's account from the financial institution;
1238 and

1239 (b) A statement by the guardian under penalty of perjury
1240 that the guardian has custody and control of the ward's property
1241 as shown in the year-end statement.

1242 Section 45. The Division of Law Revision is directed to
1243 replace the phrase "the effective date of this section" wherever
1244 it occurs in this act with the date those sections become law.

1245 Section 46. If any provision of this act or the application
1246 thereof to any person or circumstance is held invalid, the
1247 invalidity does not affect other provisions or applications of

20211070er

1248 this act which can be given effect without the invalid provision
1249 or application, and to this end the provisions of this act are
1250 severable.

1251 Section 47. Except as otherwise expressly provided in this
1252 act and except for this section, which shall take effect upon
1253 this act becoming a law, this act shall take effect July 1,
1254 2021.