

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 1173](#)
TITLE: Florida Trust Code
SPONSOR(S): Duggan

COMPANION BILL: [CS/SB 806](#) (Yarborough)
LINKED BILLS: None
RELATED BILLS: None

Committee References

[Civil Justice & Claims](#)

14 Y, 2 N, As CS



[Insurance & Banking](#)

16 Y, 0 N



[Judiciary](#)

SUMMARY

Effect of the Bill:

CS/HB 1173 limits the common law's "special interest exception" for charitable trust enforcement by giving the Florida Attorney General the exclusive authority to assert, in any judicial proceeding within Florida or elsewhere, the rights of a qualified beneficiary of a charitable trust having its principal place of administration in Florida. The bill also expressly prohibits the Attorney General or other public officer of another state from asserting the rights made exclusive to the Florida Attorney General by the bill, and makes conforming changes.

Fiscal or Economic Impact:

None

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ANALYSIS

EFFECT OF THE BILL:

The bill amends provisions of the [Florida Trust Code](#) to limit the [common law's "special interest exception"](#) for [charitable trust](#) enforcement in order to prevent the Attorney General or other public officers of states other than Florida from suing to enforce the rights of the [qualified beneficiaries](#) of a charitable trust with its [principal place of administration](#) in Florida. To accomplish this, the bill:

- Amends [s. 736.0110, F.S.](#), to provide that, where the [Florida Attorney General](#) asserts the rights of a qualified beneficiary under that section, the Florida Attorney General has the exclusive authority to represent the general public, unnamed charitable beneficiaries, and any person having a special interest in a charitable trust in any [judicial proceeding](#), within Florida or elsewhere, with respect to all matters relating to the charitable trust. This [standing](#) extends to all matters relating to the trust's administration, including contract and trust law claims relating to charitable distributions and the exercise of [trustee](#) powers, and the bill expressly prohibits the Attorney General or other public officer of another state from asserting the rights made exclusive to the Florida Attorney General under this section. (Section [1](#))
- Amends [s. 736.0405, F.S.](#), to provide that, though current law gives the settlor of a charitable trust, "among others," standing to enforce the trust, this section may not be construed to afford standing to the Attorney General or public officer of another state with respect to any charitable trust having its principal place of administration in Florida. (Section [3](#))

The bill also:

- Makes a conforming change to [s. 736.0106, F.S.](#) (Section [2](#))
- Reenacts [s. 738.303, F.S.](#), to incorporate the amendment made to [s. 736.0110, F.S.](#) (Section [4](#))
- Provides an effective date of upon becoming a law. (Section [5](#))

STORAGE NAME: h1173c.IBS

DATE: 3/27/2025

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Florida Attorney General

Article IV, section 4 of the Florida Constitution designates the Florida Attorney General as the chief legal officer of this state. Elected to serve a four-year term, the Florida Attorney General's powers and duties, codified in Art. IV, section 4 of the Florida Constitution and in ch. 16, F.S., include asserting the rights of Florida's citizens and those impacted by business and commercial activities occurring in this state in legal proceedings as directed by law.

Florida Trust Code

Generally speaking, a trust is a relationship in which one party (the "settlor")¹ gives another party (the "trustee")² the right to hold title to the settlor's assets for a third party's benefit (the "beneficiary").³ A trust may be created and take effect during a settlor's lifetime ("a living trust") or may be created by a will or other disposition and take effect when the settlor dies ("testamentary trust").⁴ A trust may also be revocable (so that the terms may be changed at any time before the settlor's death) or irrevocable (so that the terms cannot be modified after the trust's creation absent a court order upon the consent of the beneficiaries or where the trust's purposes have become frustrated or illegal).⁵

Trust Governance

A trust is generally governed by the law of the jurisdiction designated in the trust's terms, provided there is a sufficient nexus to the designated jurisdiction at the time of the trust's creation or during the trust's administration; a sufficient nexus may include, but is not limited to, the location of real property held by the trust or the residence or location of an office of the settlor, a trustee, or any beneficiary.⁶ However, where there is no controlling designation in the trust's terms, a trust is governed by the law of the jurisdiction where the settlor resides at the time of the trust's creation.⁷

Florida trusts are generally governed by the Florida Trust Code, codified in ch. 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes, and, importantly, the terms of the trust govern over Trust Code provisions unless the Trust Code provides otherwise.⁸ Further, s. 736.0106, F.S., provides that "[t]he common law of trusts and principles of equity supplement [the Trust Code], except to the extent modified by [the Trust Code] or another law of this state."

Trust Creation

Under Florida law, a trust is created only if certain conditions are met. Specifically, to create a trust:

- The settlor must have capacity to create a trust;⁹
- The settlor must indicate an intent to create a trust;

¹ "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.

² A settlor can designate a trustee, and successor trustees, in the trust document itself; however, where there is no designated trustee, or if the designated trustee is unable or unwilling to accept the trusteeship, the qualified beneficiaries may select a trustee by unanimous agreement, or else a court may appoint a trustee. S. 736.0704, F.S.

³ A "beneficiary" may have a present or future beneficial interest in a trust, which interest may be vested or contingent. S. 736.0103(4), F.S.

⁴ See "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019); s. 736.0401, F.S.

⁵ Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What's the Difference*, <https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp> (last visited Mar. 20, 2025).

⁶ S. 736.0107, F.S.

⁷ *Id.*

⁸ Ss. 736.0102 and 736.0105, F.S.

⁹ The capacity required to create, amend, revoke, or add property to a trust, or to direct the actions of the trustee, is generally the same as that required to make a will. In other words, the settlor must be at least 18 years of age and of sound mind, meaning that he or she understands the nature and extent of the property placed in trust, the identities of the beneficiaries, and the effect of the disposition. Ss. 732.501 and 736.0601, F.S.

- The trust must have a definite beneficiary,¹⁰ or else be a charitable trust, a trust for the care of an animal,¹¹ or a trust for a non-charitable purpose;¹²
- The trustee must have duties to perform;¹³ and
- The same person cannot be the sole trustee and sole beneficiary.¹⁴

Further, a trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve.¹⁵

Principal Place of Administration

Generally speaking, a trust’s “[principal place of administration](#)” is the usual place where the day-to-day activities of the trust occur and, typically, where the trusts’ records are kept; this place may be designated in the trust’s terms or, where no such designation is made, determined by operation of law. However, [s. 736.0108, F.S.](#), provides that a designation of a trust’s principal place of administration is valid only if there is a sufficient connection with the designated jurisdiction; under this section, such a connection exists if:

- A trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
- All or part of the administration occurs in the designated jurisdiction.¹⁶

Further, [s. 736.0108, F.S.](#), specifies that, where there is no valid designation of a trust’s principal place of administration, the principal place of administration is the trustee’s usual place of business where the records pertaining to the trust are kept or, if the trustee has no place of business, the trustee’s place of residence. Other rules apply where there is no designation but there are co-trustees, or where the trustee is a bank, association, or trust company organized under Florida law or a bank or savings association organized under United States law with its main office in Florida.¹⁷

Rights of Qualified Beneficiaries

Under Florida law, a “[qualified beneficiary](#)” is a living beneficiary who, on the date the beneficiary’s qualification is determined:

- Is a distributee or permissible distributee of trust income or principal;
- Would be a distributee or permissible distributee of trust income or principal if the interest of the distributees described above terminated on that date without causing the trust’s termination; or
- Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.¹⁸

¹⁰ A beneficiary is “definite” if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. S. [736.0402\(2\), F.S.](#)

¹¹ A trust may be created for the care of an animal alive during the settlor’s lifetime. Such a trust terminates on the animal’s death or, if the trust was created to provide for the care of more than one qualifying animal, on the death of the last surviving animal. S. [736.0408, F.S.](#)

¹² A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary. Such a trust may not be enforced for more than 1,000 years. S. [736.0409, F.S.](#)

¹³ Trustees must generally comply with the duties set out in the trust instrument. The Florida Trust Code also confers a number of duties on trustees, intended to ensure that trustees put the beneficiaries’ interests before their own interests and act fairly and in good faith to preserve and protect the trust’s assets for the beneficiaries’ benefit. S. [736.0801, F.S.](#)

¹⁴ S. [736.0402\(1\), F.S.](#)

¹⁵ S. [736.0404, F.S.](#)

¹⁶ This does not preclude other means for establishing a sufficient connection.

¹⁷ S. [736.0108, F.S.](#)

¹⁸ For example, imagine a scenario in which a settlor establishes a trust, the terms of which provide that: 1) upon the settlor’s death, the residue of the trust will be held by a trustee who will distribute the income to Person A during her lifetime; and 2) upon Person A’s death, the trustee will distribute the remainder to Person B. When the settlor later dies, Person A is a qualified beneficiary because she will receive the income during her lifetime, and Person B is a qualified beneficiary because she will receive the remainder upon Person A’s death. Contrast this with a scenario in which the settlor establishes a trust, the terms of which provide that: 1) upon the settlor’s death, the residue of the trust will be distributed outright to Person A; and 2) if Person A predeceases the settlor, the residue of the trust is to be distributed outright to Person B. If, after establishing the trust, the settlor dies and Person A is still living, Person A is a qualified beneficiary because she is entitled to the residue of the trust; however, Person B would not be a qualified beneficiary as the trust would terminate without Person B receiving any distributions. On the other hand, in that scenario, if Person A had died before the settlor did, Person B would be a qualified beneficiary. S. [736.0103, F.S.](#)

Whether a beneficiary is “qualified” or not has legal significance, as a qualified beneficiary generally has more rights and obligations with respect to the trust than others who may have an interest therein; this is because the interests of a “qualified beneficiary” are typically more immediate and defined, while the interests of a beneficiary that is not a “qualified beneficiary” are more contingent or undefined. Importantly, the rights of a qualified beneficiary generally include the right to be kept reasonably informed of the trust and its administration, to receive distributions in accordance with the trust’s terms, and to assert their own rights in court.¹⁹

Judicial Proceedings

Generally speaking, the courts intervene in trust administration only to the extent that an interested person invokes the court’s jurisdiction.²⁰ Where the courts do intervene, [judicial proceedings](#) involving a trust may relate to the validity, administration, or distribution of a trust, and may include proceedings to:

- Determine a trust’s validity;
- Appoint or remove a trustee;
- Ascertain beneficiaries;
- Determine any question arising in the administration or distribution of any trust, including questions pertaining to the construction of the trust instrument;
- Determine the existence or non-existence of any immunity, power, privilege, duty, or right;
- Obtain a declaration of rights; or
- Determine any other matters involving trustees and beneficiaries.²¹

Charitable Trusts

A “[charitable trust](#)” is a trust created for charitable purposes, which purposes may include poverty relief; the advancement of the arts, science, education, or religion; or the promotion of health, governmental, or municipal objectives.²² The settlor of a charitable trust may designate in the trust instrument a particular charitable purpose or beneficiary, but, where the trust instrument includes no such designation, the court may select one or more charitable purposes or beneficiaries.²³

Under [s. 736.0405, F.S.](#), the settlor of a charitable trust, “among others,” has [standing](#)²⁴ to enforce the trust in court, and, as discussed above, Florida law also gives a named qualified beneficiary of a charitable trust standing to assert its own rights in court.²⁵ Further, [s. 736.0110, F.S.](#), gives the Florida Attorney General the authority to assert, in any judicial proceeding, the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. This is a particularly useful tool when the trust instrument does not name a specific charitable organization as a beneficiary, but instead specifies a more general charitable purpose from which any number of charitable organizations or persons may benefit; in such instances, courts have found that the public at large lacks standing to sue as, “if it were otherwise there would be no end to potential litigation against a given defendant...brought by individuals or residents, all possessed of the same general interest, since none of them would be bound by *res judicata*²⁶ as a result of prior suits.”²⁷

However, the [common law](#)²⁸ also provides a “[special interest exception](#)” to charitable trust enforcement; specifically, courts have found that a party alleging a “special interest” – that is, an interest beyond that general interest possessed by the public at large – has standing to sue to enforce a charitable trust.²⁹ Because of this

¹⁹ S. [736.0813, F.S.](#)

²⁰ S. [736.0201, F.S.](#)

²¹ *Id.*

²² S. [736.0405, F.S.](#)

²³ *Id.*

²⁴ “Standing” refers to the capacity of a person to bring a lawsuit in court. Legal Information Institute, *Standing*, <https://www.law.cornell.edu/wex/standing> (last visited Mar. 20, 2025).

²⁵ S. [736.0110, F.S.](#)

²⁶ “Res judicata” refers to the legal principal that a cause of action may not be relitigated once it has been judged on the merits. Legal Information Institute, *Res Judicata*, https://www.law.cornell.edu/wex/res_judicata (last visited Mar. 20, 2025).

²⁷ *U.S. Steele Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9 (Fla. 1974).

²⁸ The “common law” is law derived from judicial decisions instead of from statutes. Legal Information Institute, *Common Law*, https://www.law.cornell.edu/wex/common_law (last visited Mar. 20, 2025).

²⁹ *State of Del. ex rel. Gebelein v. Florida First Nat. Bank of Jacksonville*, 381 So. 2d 1075 (Fla. 1st DCA 1979).

exception, Florida courts have allowed the Attorney General of a state other than Florida to sue to enforce a charitable trust with its principal place of administration in Florida where the court found that the trust instrument provided a benefit for the people of that other state; this, the courts found, created a “special interest” in the trust’s enforcement which gave that state’s Attorney General standing to sue on behalf of its interested citizens.³⁰

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	14 Y, 2 N, As CS	3/20/2025	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE: Limited the Florida Attorney General’s exclusive authority under the bill.				
Insurance & Banking Subcommittee	16 Y, 0 N	3/27/2025	Hamon	Herrera
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

³⁰ See, e.g., *id.*; see also, e.g., *Jennings v. Durden*, 2024 WL 2788198 (Fla. 5th DCA 2024).