

By Senator Berman

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1 A bill to be entitled
2 An act relating to trusts; amending s. 736.04117,
3 F.S.; revising the definition of the term "authorized
4 trustee"; revising how an authorized trustee may
5 exercise the power to invade principal as an
6 authorized trustee administering a trust; providing
7 that notice of such exercise by an authorized trustee
8 is not a trust disclosure document; providing that a
9 trust disclosure document may not commence a
10 limitations period unless such trust disclosure
11 document is provided after the effective date of the
12 exercise of the power to invade principal by an
13 authorized trustee; providing applicability; amending
14 s. 736.08125, F.S.; providing an exception with regard
15 to protection of successor trustees; creating s.
16 736.10085, F.S.; barring certain actions initiated by
17 specified parties against prior trustees; creating s.
18 736.1110, F.S.; providing that property devised to or
19 from a revocable trust which is devised, given, or
20 distributed to a donee by a settlor during the
21 settlor's lifetime is treated as a satisfaction of
22 devise to that donee if certain criteria are met;
23 providing that property distributed or given to a
24 devisee during a settlor's lifetime is to be valued at
25 the time the devisee came into possession or enjoyment
26 of the property, or at the time of the death of the
27 settlor, whichever occurs first; providing
28 applicability; amending s. 736.1502, F.S.; revising
29 the definitions of the terms "community property" and

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30 "community property trust"; amending s. 736.151, F.S.;

31 providing that homestead property transferred by one

32 or both settlor spouses to community property will not

33 be treated as a change of ownership for the purposes

34 of reassessing the property; providing that such

35 transfer qualifies as a change or transfer of legal or

36 equitable title between spouses; providing

37 construction and retroactive application; providing a

38 directive to the Division of Law Revision; providing

39 an effective date.

40

41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Paragraph (b) of subsection (1), paragraph (a)

44 of subsection (2), subsection (3), paragraph (a) of subsection

45 (4), and paragraph (d) of subsection (8) of section 736.04117,

46 Florida Statutes, are amended, and subsection (12) is added to

47 that section, to read:

48 736.04117 Trustee's power to invade principal in trust.—

49 (1) DEFINITIONS.—As used in this section, the term:

50 (b) "Authorized trustee" means a trustee, other than the

51 settlor or a beneficiary, who has the power to invade the

52 principal of a trust. For the purposes of this section, an

53 authorized trustee will not be considered a settlor of a second

54 trust, even if the authorized trustee created the trust

55 instrument governing the second trust or made a distribution of

56 assets from the first trust to the second trust. In determining

57 settlor intent with respect to a second trust or a modification

58 of the first trust, the intent of a settlor of the first trust,

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59 a settlor of the second trust, or the authorized trustee may be
60 considered.

61 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
62 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

63 (a) Unless a trust instrument expressly provides otherwise,
64 an authorized trustee who has absolute power under the terms of
65 the trust to invade its principal, referred to in this section
66 as the "first trust," to make current distributions to or for
67 the benefit of one or more beneficiaries may instead exercise
68 such power by modifying the terms of the first trust or by
69 appointing all or part of the principal of the trust subject to
70 such power in favor of a trustee of one or more other trusts,
71 whether created under the same trust instrument as the first
72 trust or a different trust instrument, including a trust
73 instrument created for the purposes of exercising the power
74 granted by this section, each referred to in this section as the
75 "second trust," for the current benefit of one or more of such
76 beneficiaries only if:

77 1. The beneficiaries of the second trust include only
78 beneficiaries of the first trust; and

79 2. The second trust does not reduce any vested interest.

80 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
81 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
82 Unless the trust instrument expressly provides otherwise, an
83 authorized trustee who has a power, other than an absolute
84 power, under the terms of a first trust to invade principal to
85 make current distributions to or for the benefit of one or more
86 beneficiaries may instead exercise such power by modifying the
87 terms of the first trust or by appointing all or part of the

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88 principal of the first trust subject to such power in favor of a
89 trustee of one or more second trusts. If the authorized trustee
90 exercises such power:

91 (a) The second trusts, in the aggregate, must ~~shall~~ grant
92 each beneficiary of the first trust beneficial interests in the
93 second trusts which are substantially similar to the beneficial
94 interests of the beneficiary in the first trust.

95 (b) If the first trust grants a power of appointment to a
96 beneficiary of the first trust, the second trust must ~~shall~~
97 grant such power of appointment in the second trust to such
98 beneficiary, and the class of permissible appointees must ~~shall~~
99 be the same as in the first trust.

100 (c) If the first trust does not grant a power of
101 appointment to a beneficiary of the first trust, the second
102 trust may not grant a power of appointment in the second trust
103 to such beneficiary.

104 (d) Notwithstanding paragraphs (a), (b), and (c), the term
105 of the second trust may extend beyond the term of the first
106 trust, and, for any period after the first trust would have
107 otherwise terminated, in whole or in part, under the provisions
108 of the first trust, the trust instrument of the second trust
109 may, with respect to property subject to such extended term:

110 1. Include language providing the trustee with the absolute
111 power to invade the principal of the second trust during such
112 extended term; and

113 2. Create a power of appointment, if the power holder is a
114 current beneficiary of the first trust, or expand the class of
115 permissible appointees in favor of which a power of appointment
116 may be exercised.

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117 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
118 TRUST.—

119 (a) Notwithstanding subsections (2) and (3), unless the
120 trust instrument expressly provides otherwise, an authorized
121 trustee who has the power under the terms of a first trust to
122 invade the principal of the first trust to make current
123 distributions to or for the benefit of a beneficiary with a
124 disability may instead exercise such power by modifying the
125 terms of the first trust or by appointing all or part of the
126 principal of the first trust in favor of a trustee of a second
127 trust that is a supplemental needs trust if:

128 1. The supplemental needs trust benefits the beneficiary
129 with a disability;

130 2. The beneficiaries of the second trust include only
131 beneficiaries of the first trust; and

132 3. The authorized trustee determines that the exercise of
133 such power will further the purposes of the first trust.

134 (8) NOTICE.—

135 (d) The authorized trustee's notice under this subsection
136 is not a trust disclosure document as defined in s. 736.1008(4)
137 and does not limit the right of any beneficiary to object to the
138 exercise of the authorized trustee's power to invade principal
139 except as otherwise provided in other applicable provisions of
140 this code. With respect to the exercise of the authorized
141 trustee's power to invade principal, such trust disclosure
142 document will not commence a limitations period unless the trust
143 disclosure document is provided after the effective date of the
144 exercise of such power to invade principal by the authorized
145 trustee.

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146 (12) APPLICATION.-

147 (a) This section applies to all trusts that are governed by
 148 the laws of this state or that have a principal place of
 149 administration within this state.

150 (b) The amendments to this section by this act apply to all
 151 trusts created before, on, or after the effective date of this
 152 act.

153 Section 2. Subsection (3) of section 736.08125, Florida
 154 Statutes, is amended to read:

155 736.08125 Protection of successor trustees.-

156 (3) Except as provided in s. 736.10085, ~~nothing in this~~
 157 section does not affect ~~affects~~ any liability of the prior
 158 trustee or the right of the successor trustee or any beneficiary
 159 to pursue an action or claim against the prior trustee.

160 Section 3. Section 736.10085, Florida Statutes, is created
 161 to read:

162 736.10085 Claims against former trustees.-An action or
 163 claim by a successor trustee or other person acting on behalf of
 164 the trust against a prior trustee is barred to the same extent
 165 that the action or claim would be barred if brought by the
 166 beneficiary whose interests are represented by the successor
 167 trustee or other person acting on behalf of the trust.

168 Section 4. Section 736.1110, Florida Statutes, is created
 169 to read:

170 736.1110 Ademption by satisfaction.-

171 (1) Property devised to or from a revocable trust which a
 172 settlor gave to a donee during the settlor's lifetime or which
 173 is distributed from a revocable trust to a donee during the
 174 settlor's lifetime is to be treated as a satisfaction of a

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175 devise to that donee, in whole or in part, upon the settlor's
176 death, if any of the following circumstances applies:

177 (a) The trust instrument provides for the deduction of the
178 lifetime gift or distribution.

179 (b) The settlor or the trustee of the revocable trust
180 declares in a contemporaneous writing that the gift or
181 distribution is to be deducted from the devise or is in
182 satisfaction of the devise.

183 (c) The devisee acknowledges in writing that the gift or
184 distribution is in satisfaction of the devise.

185 (2) For purposes of part satisfaction, property distributed
186 or given during the settlor's lifetime is valued at the time the
187 devisee came into possession or enjoyment of the property or at
188 the time of the death of the settlor, whichever occurs first.

189 (3) This section applies to revocable trusts that become
190 irrevocable on or after July 1, 2025.

191 Section 5. Subsections (1) and (2) of section 736.1502,
192 Florida Statutes, are amended to read:

193 736.1502 Definitions.—Unless the context otherwise
194 requires, as used in this part:

195 (1) "Community property" means the property and the
196 appreciation of and income from the property owned by a
197 qualified trustee of a community property trust during the
198 marriage of the settlor spouses. The property owned by a
199 community property trust pursuant to this part and the
200 appreciation of and income from such property are ~~shall be~~
201 ~~deemed to be~~ community property for purposes of general law.

202 (2) "Community property trust" means an express trust that
203 complies with s. 736.1503 and is created, amended, restated, or

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204 modified on or after July 1, 2021.

205 Section 6. Subsection (3) is added to section 736.151,
206 Florida Statutes, to read:

207 736.151 Homestead property.—

208 (3) A transfer of homestead property by one or both of the
209 settlor spouses to a community property will not be treated as a
210 change of ownership for purposes of reassessing the property and
211 instead qualifies as a change or transfer of legal or equitable
212 title between spouses as described in s. 193.155(3)(a)2.

213 Section 7. The amendments made to ss. 736.1502 and 736.151,
214 Florida Statutes, as created by this act, are intended to
215 clarify existing law and shall apply to all community property
216 trusts created before, on, or after the effective date of this
217 act.

218 Section 8. The Division of Law Revision is directed to
219 replace, respectively, the phrase "this act" wherever it occurs
220 in this act with the assigned chapter number of this act and the
221 phrase "the effective date of this act" wherever it occurs in
222 this act with the date this act becomes a law.

223 Section 9. This act shall take effect upon becoming a law.