

By the Committee on Judiciary; and Senator Berman

590-02004-25

2025262c1

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

590-02004-25

2025262c1

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

31 providing that homestead property transferred by one

32 or both settlor spouses to a community property trust

33 will not be treated as a change of ownership for the

34 purposes of reassessing the property; providing that

35 such transfer qualifies as a change or transfer of

36 legal or equitable title between spouses; providing

37 construction and retroactive application; providing an

38 effective date.

39

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

41

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

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

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

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

46 that section, to read:

47 736.04117 Trustee's power to invade principal in trust.—

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

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

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

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

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

53 trust, even if the authorized trustee created the trust

54 instrument governing the second trust or made a distribution of

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

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

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

58 a settlor of the second trust, or the authorized trustee may be

590-02004-25

2025262c1

59 considered.

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

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

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

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

79 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
80 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—

81 Unless the trust instrument expressly provides otherwise, an
82 authorized trustee who has a power, other than an absolute
83 power, under the terms of a first trust to invade principal to
84 make current distributions to or for the benefit of one or more
85 beneficiaries may instead exercise such power by modifying the
86 terms of the first trust or by appointing all or part of the
87 principal of the first trust subject to such power in favor of a

590-02004-25

2025262c1

88 trustee of one or more second trusts. If the authorized trustee
89 exercises such power:

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

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

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

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

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

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

116 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS

590-02004-25

2025262c1

117 TRUST.—

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

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

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

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

133 (8) NOTICE.—

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

145 (12) APPLICATION.—This section applies to all trusts that

590-02004-25

2025262c1

146 are governed by the laws of this state or that have a principal
147 place of administration within this state.

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

150 736.08125 Protection of successor trustees.—

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

155 Section 3. Section 736.10085, Florida Statutes, is created
156 to read:

157 736.10085 Claims against former trustees.—An action or
158 claim by a successor trustee or other person acting on behalf of
159 the trust against a prior trustee is barred to the same extent
160 that the action or claim would be barred if brought by the
161 beneficiary whose interests are represented by the successor
162 trustee or other person acting on behalf of the trust.

163 Section 4. Section 736.1110, Florida Statutes, is created
164 to read:

165 736.1110 Ademption by satisfaction.—

166 (1) Property devised to or from a revocable trust which a
167 settlor gave to a donee during the settlor's lifetime or which
168 is distributed from a revocable trust to a donee during the
169 settlor's lifetime is to be treated as a satisfaction of a
170 devise to that donee, in whole or in part, upon the settlor's
171 death, if any of the following circumstances applies:

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

174 (b) The settlor or the trustee of the revocable trust

590-02004-25

2025262c1

175 declares in a contemporaneous writing that the gift or
 176 distribution is to be deducted from the devise or is in
 177 satisfaction of the devise.

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

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

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

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

188 736.1502 Definitions.—Unless the context otherwise
 189 requires, as used in this part:

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

197 (2) "Community property trust" means an express trust that
 198 complies with s. 736.1503 and is created, amended, restated, or
 199 modified on or after July 1, 2021.

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

202 736.151 Homestead property.—

203 (3) A transfer of homestead property by one or both of the

590-02004-25

2025262c1

204 settlor spouses to a community property trust will not be
205 treated as a change of ownership for purposes of reassessing the
206 property and instead qualifies as a change or transfer of legal
207 or equitable title between spouses as described in s.
208 193.155(3)(a)2.

209 Section 7. The amendments made by this act to ss.
210 736.04117, 736.1502, and 736.151, Florida Statutes, are remedial
211 and apply to trusts created before, on, or after the effective
212 date of this act.

213 Section 8. This act shall take effect upon becoming a law.