

By the Committees on Community Affairs; and Judiciary; and
Senator Berman

578-02303-25

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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 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 settlor

50 or a beneficiary, who has the power to invade the principal of a

51 trust. For the purposes of this section, an authorized trustee

52 will not be considered a settlor of a second trust, even if the

53 authorized trustee created the trust instrument governing the

54 second trust or made a distribution of assets from the first

55 trust to the second trust. In determining settlor intent with

56 respect to a second trust or a modification of the first trust,

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

58 second trust, and the authorized trustee may be considered.

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

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

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

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

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

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88 exercises such power:

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

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

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

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

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

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

115 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
116 TRUST.-

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

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

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

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

132 (8) NOTICE.—

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

144 (12) APPLICATION.—This section applies to all trusts that
145 are governed by the laws of this state or that have a principal

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146 place of administration within this state.

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

149 736.08125 Protection of successor trustees.—

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

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

156 736.10085 Claims against former trustees.—An action or
157 claim by a successor trustee or other person acting on behalf of
158 the trust against a prior trustee is barred to the same extent
159 that the action or claim would be barred if brought by the
160 beneficiary whose interests are represented by the successor
161 trustee or other person acting on behalf of the trust.

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

164 736.1110 Ademption by satisfaction.—

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

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

173 (b) The settlor or the trustee of the revocable trust
174 declares in a contemporaneous writing that the gift or

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175 distribution is to be deducted from the devise or is in
176 satisfaction of the devise.

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

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

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

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

187 736.1502 Definitions.—Unless the context otherwise
188 requires, as used in this part:

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

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

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

201 736.151 Homestead property.—

202 (3) A transfer of homestead property by one or both of the
203 settlor spouses to a community property trust will not be

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204 treated as a change of ownership for purposes of reassessing the
205 property and instead qualifies as a change or transfer of legal
206 or equitable title between spouses as described in s.
207 193.155(3)(a)2.

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

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