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1
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.

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

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

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

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

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

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

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

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exercises such power:

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

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

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

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

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

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

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

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

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

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

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

(8) NOTICE.—

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

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

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place of administration within this state.

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

736.08125 Protection of successor trustees.—

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

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

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

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

736.1110 Ademption by satisfaction.—

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

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

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