

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
 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 for retroactive application;
 38 providing a directive to the Division of Law Revision;
 39 providing an effective date.

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

42

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,
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
64 otherwise, an authorized trustee who has absolute power under
65 the terms of the trust to invade its principal, referred to in
66 this section as the "first trust," to make current distributions
67 to or for the benefit of one or more beneficiaries may instead
68 exercise such power by modifying the terms of the first trust or
69 by appointing all or part of the principal of the trust subject
70 to 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
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
111 absolute power to invade the principal of the second trust
112 during such 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.

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.

146 (12) APPLICATION.—

147 (a) This section applies to all trusts that are governed
148 by 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

151 all trusts created before, on, or after the effective date of
152 this 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
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
 186 distributed or given during the settlor's lifetime is valued at
 187 the time the devisee came into possession or enjoyment of the
 188 property or at the time of the death of the settlor, whichever
 189 occurs first.

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

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

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

196 (1) "Community property" means the property and the
 197 appreciation of and income from the property owned by a
 198 qualified trustee of a community property trust during the
 199 marriage of the settlor spouses. The property owned by a
 200 community property trust pursuant to this part and the

201 appreciation of and income from such property are ~~shall be~~
202 ~~deemed to be~~ community property for purposes of general law.

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

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

208 736.151 Homestead property.—

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

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