

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 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  
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  
63 otherwise, an authorized trustee who has absolute power under  
64 the terms of the trust to invade its principal, referred to in  
65 this section as the "first trust," to make current distributions  
66 to or for the benefit of one or more beneficiaries may instead  
67 exercise such power by modifying the terms of the first trust or  
68 by appointing all or part of the principal of the trust subject  
69 to 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  
 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  
 110 absolute power to invade the principal of the second trust  
 111 during such 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  
 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  
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  
 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  
 181 distributed or given during the settlor's lifetime is valued at  
 182 the time the devisee came into possession or enjoyment of the  
 183 property or at the time of the death of the settlor, whichever  
 184 occurs first.

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

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

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

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

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



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

203           736.151 Homestead property.—

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

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

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