

# FLORIDA HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

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<b>BILL #:</b> <a href="#">HB 895</a>	<b>COMPANION BILL:</b> <a href="#">CS/SB 786</a> (Berman)
<b>TITLE:</b> Trustee Settlement and Discharge	<b>LINKED BILLS:</b> None
<b>SPONSOR(S):</b> Hodgers and Fabricio	<b>RELATED BILLS:</b> None

**FINAL HOUSE FLOOR ACTION:** 110 Y's 0 N's      **GOVERNOR'S ACTION:** Pending

## SUMMARY

### Effect of the Bill:

HB 895 creates s. 736.10081, F.S., within the Florida Trust Code, to establish a non-judicial summary procedure for trustee liability and claims discharge in non-adversarial irrevocable trust administrations where the trustee has substantially complied with certain trustee duties. Under the bill, a trustee wishing to utilize the summary procedure must provide each qualified beneficiary with a trust disclosure document, and receipt by the trustee of a timely written objection to the use of the summary procedure renders the procedure inapplicable to the particular trust's administration. However, if the trustee does not receive a timely written objection, the trustee is discharged upon completion of specified actions and is discharged from all liability and claims arising from any matter adequately disclosed in the trust disclosure document with the same effect as if the court had entered a final order approving that act or omission.

Further, the bill:

- Applies to all trusts that are irrevocable or become irrevocable on or after the bill's effective date.
- Provides an effective date of upon becoming a law.

### Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact on the state court system and on the private sector.

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## ANALYSIS

### **EFFECT OF THE BILL:**

HB 895 creates s. 736.10081, F.S., within the [Florida Trust Code](#), to establish a cost-effective summary procedure for [trustee liability discharge](#) in non-adversarial [irrevocable](#) trust administrations where the trustee has substantially complied with certain [trustee duties](#). Once such a discharge is obtained, all claims or causes of action against the trustee pertaining to matters properly disclosed in a trust disclosure document would generally be barred. (Section [1](#))

### Qualifying Trustees

Under the bill, a trustee who is in substantial compliance with the duty to [inform and account](#) may obtain a settlement of his or her accounts and be discharged when either of the following occurs six months after the date of the [trustee's acceptance](#) of the trusteeship:

- The [trust terminates](#).
- A trustee [resigns](#) or is [removed](#) from the trust.

In other words, qualifying trustees may initiate the summary procedure for trustee liability and claims discharge, which procedure, when applied, eliminates the need to utilize the often costly, time-intensive processes to obtain such a discharge available under current law. (Section [1](#))

**STORAGE NAME:** h0895z

**DATE:** 3/19/2026

## Trust Disclosure Document Required

The bill requires a trustee seeking to use the summary procedure to send to the trust's qualified [beneficiaries](#) and any co-trustees, along with the immediate successor trustee if the trust is not terminating, a [trust disclosure document](#) containing all of the following information:

- The name, mailing address, telephone number, and e-mail address of the trustee seeking discharge.
- A [plan of distribution](#) for the trust's remaining assets, which includes all of the following:
  - A schedule of the assets reasonably anticipated to be disbursed or distributed by the trustee.
  - The amount of any debts, expenses, and taxes to be paid by the trustee.
  - Any reasonable reserve to be held by the trustee.
- If the trustee's duty to account has not been waived, a [trust accounting](#) for the period for which an accounting has not been previously provided to the trust's qualified beneficiaries.
- A statement that the trust has terminated or that the trustee has resigned or has been removed.
- A notice with substantially the following language in at least 12-point type:

NOTICE: Any claim or cause of action you might have against the trustee arising from any matter disclosed in a trust disclosure document may be barred unless a written statement objecting is received by the trustee from you within 60 days after your receipt of this trust disclosure document and notice. If you have questions, please consult your attorney.

The trustee must also send the trust disclosure document to any other person who the trustee reasonably believes would be affected by such document, and the document and any objections must generally be sent in compliance with the [notice requirements](#) of [s. 736.0109, F.S.](#) However, under the bill, [s. 736.0109\(3\), F.S.](#), requiring written authorization from the recipient before a document may be sent solely by posting to an electronic account or website, along with the sending of a separate notice to the recipient whenever a notice is posted to the account or website, does not apply. Practically speaking, this means that:

- The trust disclosure document and any objections may be sent in any manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document; and
- Notice or the sending of a document:
  - Is complete when sent; and
  - May be waived by the person to be notified or to whom the document is to be sent. ([Section 1](#))

## Objections and Discharge

The summary procedure created by the bill does not apply if the trustee receives a written objection within 60 days after sending the trust disclosure document; such an objection does not need to state the grounds for the objection or be in any particular form. However, if the trustee does not receive a timely written objection, the trustee is discharged upon completion of all distributions or transfers in accordance with the plan of distribution and is discharged from all liability and claims arising from any matter adequately disclosed in the trust disclosure document, including any claim that the trustee failed to inform and account, with the same effect as if the court had entered a final order approving that act or omission; in other words, all claims and causes of action pertaining to such matters are generally thereafter barred.

Further, under the bill:

- A waiver of the right to object is treated as the expiration of the 60-day period without objection.
- The summary process created by the bill is in addition to, and not a replacement of, rights of a trustee to otherwise settle the trustee's accounts. ([Section 1](#))

## Application

The bill applies to all trusts that are irrevocable or become irrevocable on or after the bill's effective date. (Section [2](#))

## Effective Date

Subject to the Governor's veto powers, the effective date of the bill is upon becoming a law.

## **FISCAL OR ECONOMIC IMPACT:**

### STATE GOVERNMENT:

The bill may have an indeterminate fiscal impact on state government to the extent that it reduces the number of trustees required to obtain a discharge through judicial process, thereby reducing the burden on the state court system.

### PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector to the extent that use of the summary procedure created by the bill reduces the costs associated with trustee discharge.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

Generally speaking, a trust is a relationship in which one party (the "settlor")<sup>1</sup> gives another party (the "trustee")<sup>2</sup> the right to hold title to the settlor's assets for a third party's benefit (the "beneficiary").<sup>3</sup> A trust may be created and take effect during a settlor's lifetime ("a living trust") or may be created by a will or other disposition and take effect when the settlor dies ("testamentary trust").<sup>4</sup> A trust may also be revocable (so that the terms may be changed at any time before the settlor's death) or **irrevocable** (so that the terms cannot be modified after the trust's creation absent a court order upon the consent of the beneficiaries or where the trust's purposes have become frustrated or illegal).<sup>5</sup>

Most Florida trusts are generally governed by the [Florida Trust Code](#), codified in [ch. 736, F.S.](#) However, additional provisions of Florida law may apply if the trust has special attributes, and, importantly, the terms of the trust govern over Trust Code provisions unless the Trust Code provides otherwise.<sup>6</sup>

### Notice Requirements

Notice to a person or the sending of a document under the Trust Code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice document.<sup>7</sup> Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last

<sup>1</sup> "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. [736.0103\(18\), F.S.](#)

<sup>2</sup> A settlor can designate a trustee, and successor trustees, in the trust document itself; however, where there is no designated trustee, or if the designated trustee is unable or unwilling to accept the trusteeship, the qualified beneficiaries may select a trustee by unanimous agreement, or else a court may appoint a trustee. S. [736.0704, F.S.](#)

<sup>3</sup> A "beneficiary" may have a present or future beneficial interest in a trust, which interest may be vested or contingent. S. [736.0103\(4\), F.S.](#)

<sup>4</sup> See "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019); s. [736.0401, F.S.](#)

<sup>5</sup> Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What's the Difference*, <https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp> (last visited Mar. 19, 2026).

<sup>6</sup> Ss. [736.0102](#) and [736.0105, F.S.](#)

<sup>7</sup> S. [736.0109, F.S.](#)

known place of residence or business, a properly directed facsimile or other electronic message, including e-mail; or posting on a secure electronic account or website in accordance with statutory requirements.<sup>8</sup> Further:

- Notice or a document which the Trust Code otherwise requires to be given or sent need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.<sup>9</sup>
- Notice or the sending of a document under the Trust Code is complete when sent.<sup>10</sup>
- Notice or the sending of a document may be waived by the person to be notified or to whom the document is to be sent.<sup>11</sup>

### Trust Creation

Under Florida law, a trust is created only if certain conditions are met. Specifically, to create a trust:

- The settlor must have capacity to create a trust;<sup>12</sup>
- The settlor must indicate an intent to create a trust;
- The trust must have a definite beneficiary,<sup>13</sup> or else be a charitable trust,<sup>14</sup> a trust for the care of an animal,<sup>15</sup> or a trust for a non-charitable purpose;<sup>16</sup>
- The trustee must have duties to perform;<sup>17</sup> and
- The same person cannot be the sole trustee and sole beneficiary.<sup>18</sup>

Further, a trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve.<sup>19</sup>

### Trustee Acceptance

Generally speaking, a person designated as trustee accepts the trusteeship:

- By substantially complying with an acceptance method provided for in the trust's terms; or
- If the trust's terms do not provide for an acceptance method, or if any method provided is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating trusteeship acceptance.<sup>20</sup>

However, a person designated as trustee who has not accepted the trusteeship may decline it, and a designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have declined the trusteeship.<sup>21</sup> Further, a person designated as trustee may, without accepting the trusteeship:

<sup>8</sup> Under the Trust Code, a document that is sent solely by posting on an electronic account or website is not deemed sent unless the sender complies with certain statutory requirements, including the signing of a written notice by the recipient and the sending of a separate notice to the recipient when a document is posted on the electronic account or website. [Id.](#)

<sup>9</sup> [Id.](#)

<sup>10</sup> [Id.](#)

<sup>11</sup> [Id.](#)

<sup>12</sup> The capacity required to create, amend, revoke, or add property to a trust, or to direct the actions of the trustee, is generally the same as that required to make a will. In other words, the settlor must be at least 18 years of age and of sound mind, meaning that he or she understands the nature and extent of the property placed in trust, the identities of the beneficiaries, and the effect of the disposition. Ss. [732.501](#) and [736.0601, F.S.](#)

<sup>13</sup> A beneficiary is "definite" if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. S. [736.0402\(2\), F.S.](#)

<sup>14</sup> A "charitable trust" is a trust created for charitable purposes, which may include poverty relief; the advancement of the arts, science, education, or religion; or the promotion of health, governmental, or municipal purposes. S. [736.0405, F.S.](#)

<sup>15</sup> A trust may be created for the care of an animal alive during the settlor's lifetime. Such a trust terminates on the animal's death or, if the trust was created to provide for the care of more than one qualifying animal, on the death of the last surviving animal. S. [736.0408, F.S.](#)

<sup>16</sup> A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary. Such a trust may not be enforced for more than 1,000 years. S. [736.0409, F.S.](#)

<sup>17</sup> S. [736.0801, F.S.](#)

<sup>18</sup> S. [736.0402\(1\), F.S.](#)

<sup>19</sup> S. [736.0404, F.S.](#)

<sup>20</sup> S. [736.0701, F.S.](#)

<sup>21</sup> [Id.](#)

- Act to preserve the trust property if, within a reasonable time after acting, the person sends to the beneficiaries a statement declining the trusteeship.<sup>22</sup>
- Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.<sup>23</sup>

### Trustee Duties

After accepting a trusteeship, the trustee must generally comply with the trustee duties set out in the trust instrument. The Trust Code also confers a number of duties on trustees, intended to ensure that trustees put the beneficiaries' interests before their own interests and act fairly and in good faith to preserve and protect the trust's assets for the beneficiaries' benefit. Specifically, a trustee's duties under the Trust Code include:

- Administering the trust in good faith – that is, managing and distributing trust assets<sup>24</sup> – in accordance with the trust's terms and purposes and the beneficiaries' interests, and with the Trust Code;<sup>25</sup>
- Controlling and protecting trust property;<sup>26</sup> and
- Keeping clear, distinct, and accurate records.<sup>27</sup>

A trustee must also keep the trust's beneficiaries reasonably **informed** of the trust and its administration, which, in the case of an irrevocable trust, is generally accomplished through a **trust accounting**.<sup>28</sup> Under the Trust Code, a trust accounting must be a reasonably understandable report covering the time from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses specified information relating to trust assets and financials.<sup>29</sup> The trustee must generally provide such a trust accounting to each beneficiary at least annually and, generally speaking, upon trust termination or trustee discharge.<sup>30</sup>

### Breach of Trust

Where a trustee violates a duty owed to a beneficiary, the trustee commits a breach of trust.<sup>31</sup> To remedy a breach of trust, a court may, among other things:

- Compel the trustee to perform the trustee's duties;
- Enjoin the trustee from committing a breach of trust;
- Compel the trustee to pay money or restore property;
- Suspend or remove the trustee;
- Reduce or deny compensation owed to the trustee; or
- Void a trustee's act.<sup>32</sup>

However, a court typically cannot remedy a breach of trust unless a beneficiary brings a breach of trust action against the trustee within a specified time period after learning about the breach, which may occur when the beneficiary receives a **trust disclosure document**; such a document is a trust accounting or any other written report from the trustee or a trust director to the beneficiaries, the purpose of which is to adequately disclose a matter to the trust's beneficiaries to allow them to know or reasonably ascertain whether they have any kind of claim against the trustee for breach of trust related to the matter.<sup>33</sup> More specifically, under the statutory limitations period, a beneficiary is barred from bringing a breach of trust action against a trustee with respect to a matter that was

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> The method by which a trustee distributes the trust's assets is sometimes referred to as a "**plan of distribution**." See generally [ch. 736, F.S.](#)

<sup>25</sup> S. [736.0801, F.S.](#)

<sup>26</sup> S. [736.0809, F.S.](#)

<sup>27</sup> S. [736.0810, F.S.](#)

<sup>28</sup> S. [736.0813, F.S.](#)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. [736.1001, F.S.](#)

<sup>32</sup> *Id.*

<sup>33</sup> S. [736.1008\(4\)\(c\), F.S.](#)

adequately disclosed in a trust disclosure document unless the action is brought within six months after receipt of such document or a limitation notice<sup>34</sup> applicable to that document,<sup>35</sup> whichever is received later.<sup>36</sup> Further, a trustee is not liable to a beneficiary for a breach of trust if the beneficiary consented to the conduct resulting in the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

- The consent, release, or ratification was induced by the trustee's improper conduct; or
- At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or the material facts relating to the breach.<sup>37</sup>

A 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 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.<sup>38</sup>

## Trustee Resignation or Removal

### *Trustee Resignation*

A trustee may resign in accordance with the procedure set forth in the trust instrument and upon notice to the co-trustees or, if none, to the successor trustee who has accepted the appointment, or, if none, to the person or persons who have the authority to appoint a successor trustee. Notwithstanding any provision of the trust's terms, a trustee may also resign:

- Upon at least 30 days' notice to the beneficiaries, the grantor, if living, and all co-trustees; or
- With court approval.<sup>39</sup>

### *Trustee Removal*

The grantor, a co-trustee, or a beneficiary may ask the court to remove a trustee, or the court may remove a trustee on its own initiative.<sup>40</sup> In either instance, the court may remove a trustee if:

- The trustee has committed a serious breach of trust;
- The lack of cooperation among co-trustees substantially impairs the trust's administration;
- Due to the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that the trustee's removal best serves the beneficiaries' interests; or
- Circumstances have changed substantially or all of the beneficiaries request removal; the court finds that removal of the trustee best serves the beneficiaries' interests and is not inconsistent with a material purpose of the trust; and a suitable co-trustee or successor trustee is available.<sup>41</sup>

<sup>34</sup> A limitation notice is a written notice from the trustee or a trust director that a beneficiary's breach of trust action based on a matter adequately disclosed in a trust disclosure document may be barred if it is not brought within six months after receipt of the trust disclosure document or the limitation notice. S. [736.1008\(4\)\(a\), F.S.](#)

<sup>35</sup> A limitation notice applies to a trust disclosure document when the notice is: contained as a part of the trust disclosure document or as part of another trust disclosure document received within one year before the receipt of the latter trust disclosure document; accompanied concurrently by the trust disclosure document or by another trust disclosure document that was received within one year of the latter trust disclosure document; delivered separately within ten days after delivery of the trust disclosure document or another trust disclosure document that was received within one year before receipt of the latter trust disclosure document; or received more than ten days after the delivery of the trust disclosure document, but only if the limitation notice references the trust disclosure document and meets other conditions. S. [736.10089\(5\), F.S.](#)

<sup>36</sup> S. [736.1008\(4\)\(c\), F.S.](#)

<sup>37</sup> [S. 736.1012, F.S.](#)

<sup>38</sup> [S. 736.10085, F.S.](#)

<sup>39</sup> [S. 736.0705, F.S.](#)

<sup>40</sup> [S. 736.0706, F.S.](#)

<sup>41</sup> *Id.*

## Trust Revocation or Termination

### *Trust Revocation*

Unless a trust's terms expressly provide that a trust is irrevocable, the grantor may generally revoke the trust:

- By substantial compliance with a method for trust revocation provided in the trust's terms; or
- If the trust's terms do not provide such a method:
  - By a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the trust's terms; or
  - Any other method manifesting clear and convincing evidence of the grantor's intent.<sup>42</sup>

### *Trust Termination*

An irrevocable trust created after January 1, 2001, may terminate without court involvement upon the unanimous agreement of the trustee and all beneficiaries.<sup>43</sup> Alternatively, an irrevocable trust may terminate by court order upon the petition of the trustee or a beneficiary if:

- The trust's purposes have been fulfilled or have become illegal, impossible, wasteful, or impracticable to fulfill;
- Because of circumstances not anticipated by the settlor, compliance with the trust's terms would defeat or substantially impair the accomplishment of a material purpose of the trust; or
- A material purpose of the trust no longer exists.<sup>44</sup>

Further, an irrevocable trust may terminate:

- At the trustee's initiative and without court involvement if the value of the trust's assets falls below \$50,000 and is insufficient to justify the cost of trust administration.<sup>45</sup>
- By court order if the trust was created or amended as the result of fraud, duress, mistake, or undue influence.<sup>46</sup>
- By operation of law if the trust's legal and equitable interests merge – that is, when the sole trustee becomes the sole beneficiary, absent a statutory exception.<sup>47</sup>

## Trustee Discharge

Neither the trustee's resignation or removal, nor the trust's revocation or termination, alone discharges or affects the resigning trustee's liability for acts or omissions taken during the trusteeship; instead, a trustee generally remains liable for such acts or omissions unless and until the trustee is discharged from such liability. Under current law, a trustee may obtain such a discharge if the trust's beneficiaries waive the provision of a final trust accounting and provide the trustee with a liability release.<sup>48</sup> Where the beneficiaries do not waive the final trust accounting, however, a trustee must provide such accounting to the qualified beneficiaries and obtain from each a written approval thereof.<sup>49</sup> Alternatively, the trustee may file a lawsuit asking the court to approve the accounting, which lawsuit the trustee must initiate by filing a complaint with the accounting attached thereto and serving copies thereof on each beneficiary.<sup>50</sup>

Critics of the discharge procedure in current law allege that, in many instances, particularly in non-adversarial irrevocable trust administrations where the trustee substantially complied with the duty to inform and account

<sup>42</sup> [S. 736.0602, F.S.](#)

<sup>43</sup> [S. 736.0412, F.S.](#)

<sup>44</sup> [S. 736.04113, F.S.](#)

<sup>45</sup> [S. 736.0414, F.S.](#)

<sup>46</sup> [S. 736.0406, F.S.](#)

<sup>47</sup> *Axtell v. Coons*, 89 So. 419 (Fla. 1921).

<sup>48</sup> [S. 736.0813, F.S.](#)

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

during his or her trusteeship, the costs to the trust (and ultimately to the beneficiaries) associated with obtaining a discharge absent a final accounting waiver and release outweigh the beneficiaries' need for a full, final accounting.<sup>51</sup> However, it is the trustee that often insists upon following these discharge procedures where the trustee does not receive a final accounting waiver and release in order to obtain as full and complete a discharge from liability as possible.<sup>52</sup>

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<sup>51</sup> Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Statutory Settlement of Accounts and Discharge of Trustee* (Jan. 2026).

<sup>52</sup> *Id.*