

House Bill No. 897

An act relating to trusts and other agency relationships; amending s. 711.501, F.S.; including additional investment instruments within the definition of the term “security account”; creating s. 737.309, F.S.; providing procedures for the resignation of a trustee; providing that such resignation does not discharge or affect any liability of the resigning trustee; providing for notice of resignation; amending s. 737.402, F.S.; revising the powers conferred upon a trustee; amending s. 737.403, F.S.; specifying circumstances in which court authorization is not required for a trustee to exercise his or her power when a conflict of interest exists; amending s. 738.104, F.S.; removing a prohibition on a trustee’s power to make certain adjustments; specifying a circumstance under which an adjustment shall not be deemed to benefit the trustee; providing application of section to administration of certain trusts; conforming cross references; amending s. 738.1041, F.S.; providing and revising definitions; providing methods by which a trustee may make certain changes to trusts; removing requirements regarding certain minimum unitrust amounts; removing a spouse’s right to compel reconversion of certain trusts; providing remedies for trustees or disinterested persons not acting in good faith; expanding scope of section to trusts administered either in this state or under Florida law; authorizing a grantor to create an express total return unitrust; requiring certain provisions to be included in an express total return unitrust; amending s. 738.303, F.S.; redefining the term “undistributed income”; amending s. 738.401, F.S., relating to character of receipts; providing certain statements that a trustee may rely upon; providing special rules to apply to receipts by private trustees from certain entities; providing definitions; providing an effective date.

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

Section 1. Subsection (10) of section 711.501, Florida Statutes, is amended to read:

711.501 Definitions.—In ss. 711.50-711.512, unless the context otherwise requires, the term:

(10) “Security account” means:

(a) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner’s death; or

(b) An investment management account, investment advisory account, investment agency account, custody account, or any other type of account with a bank or trust company, including the securities in the account, the

cash balance in the account, and cash equivalents, and any interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or

~~(c)~~(b) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

Section 2. Section 737.309, Florida Statutes, is created to read:

737.309 Resignation of trustee.—

(1) A trustee may resign:

(a) Upon at least 30 days' written notice to the settlor, if living, all cotrustees, and all persons entitled to a trust accounting pursuant to s. 737.303, as qualified by s. 731.303; or

(b) With approval of the court. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(2) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

(3) If the resignation of a trustee would require the vacancy to be filled by a successor trustee, a trustee that resigns shall continue to serve until the successor assumes the trusteeship. The resigning trustee shall deliver copies of all notices and other records pertaining to the resignation to the successor trustee or, if none, to a cotrustee.

(4) Notice of resignation shall be served in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. The notice may be served on a legal representative or natural guardian of a beneficiary without the filing of any proceeding or approval of any court.

Section 3. Paragraphs (y) and (z) of subsection (2) of section 737.402, Florida Statutes, are amended to read:

737.402 Powers of trustees conferred by this part.—

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(y) To employ persons, including attorneys, auditors, investment advisers, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his or her administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z)1. To prosecute or defend actions, claims, or proceedings, including appeals, for the protection of trust assets and of the trustee in the performance of his or her duties.

2. To employ attorneys and other agents to advise and assist the trustee in the exercise of any of the trustee's powers and to pay compensation and costs incurred in connection with such employment from the assets of the trust.

Section 4. Subsection (2) of section 737.403, Florida Statutes, is amended to read:

737.403 Power of court to permit deviation or to approve transactions involving conflict of interest.—

(2) If the duty of the trustee and the trustee's individual interest or his or her interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization, ~~except as provided in s. 737.402(2)(a), (e), (g), (s) and (y).~~ Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee. Court authorization is not required for any of the following:

(a) The exercise of any power described in s. 737.402(2)(a), (e), (g), (s), or (y);

(b) The exercise of any power for which the trust instrument acknowledges the trustee's conflict of interest and expressly authorizes the exercise of that power notwithstanding the conflict;

(c) The exercise of any power consented to in writing by a settlor of the trust while the settlor holds the right of revocation of the trust;

(d) The exercise of any power consented to in writing by each of the beneficiaries to whom the trustee is required to provide any annual or periodic accounting. Consent under this paragraph may be given by a person who represents the interest of the beneficiary under s. 731.303 or by the legal guardian of the beneficiary or, if there is no legal guardian, by the natural guardian of the beneficiary; or

(e) Payment of costs or attorney's fees incurred in any trust proceeding from the assets of the trust unless an action has been filed or defense asserted against the trustee based upon a breach of trust. Court authorization is not required if the action or defense is later withdrawn or dismissed by the party that is alleging a breach of trust or resolved without a determination by the court that the trustee has committed a breach of trust.

Section 5. Subsections (3), (4), and (5) of section 738.104, Florida Statutes, are amended, and subsection (11) is added to said section, to read:

738.104 Trustee's power to adjust.—

(3) A trustee may not make an adjustment:

~~(a)~~ That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to adjust;

~~(a)(b)~~ That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

~~(b)(e)~~ That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

~~(c)(d)~~ From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

~~(d)(e)~~ If possessing or exercising the power to adjust causes an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to adjust;

~~(e)(f)~~ If possessing or exercising the power to adjust causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to adjust;

~~(f)(g)~~ If the trustee is a beneficiary of the trust; or

~~(g)(h)~~ If the trustee is not a beneficiary of the trust but the adjustment would benefit the trustee directly or indirectly, except that in the case of a trustee whose compensation for acting as trustee is based upon the value of trust assets, an adjustment that affects the value of trust assets shall not be deemed to benefit the trustee.

(4) If paragraph (3)~~(d)(e)~~, paragraph (3)~~(e)(f)~~, paragraph (3)~~(f)(g)~~, or paragraph (3)~~(g)(h)~~ applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee is not permitted by the terms of the trust.

(5)(a) A trustee may release the entire power to adjust conferred by subsection (1) if the trustee desires to convert an income trust to a total return unitrust pursuant to s. 738.1041.

(b) A trustee may release the entire power to adjust conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (3)(a)-~~(e)(f)~~ or paragraph (3)~~(g)(h)~~ or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (3).

(c) A release under this subsection may be permanent or for a specified period, including a period measured by the life of an individual. Notwithstanding anything contrary to this subsection, a release of the power to adjust pursuant to paragraph (a) shall remain effective only for as long as the trust is administered as a unitrust pursuant to s. 738.1041.

(11) This section shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered either in this state or under Florida law.

Section 6. Section 738.1041, Florida Statutes, is amended to read:

738.1041 Total return unitrust.—

(1) For purposes of this section, the term:

(a) “Disinterested person” means a person who is not a “related or subordinate party” as defined in s. 672(c) of the United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or any successor provision thereof, with respect to the person then acting as trustee of the trust and excludes the grantor and any interested trustee.

(b) “Fair market value” means the fair market value of assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.

~~(c)(b) “Income trust” means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons. Notwithstanding the foregoing, no trust that otherwise is an “income trust” shall qualify hereunder, if it may be subject to taxation under the Internal Revenue Code, 26 U.S.C. s. 2001 or s. 2501, until the expiration of the period for filing the return therefor, including extensions.~~

~~(d)(e) “Interested distributee” means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a “related or subordinate party,” as defined in the Internal Revenue Code, 26 U.S.C. s. 672(c), with respect to such distributee.~~

~~(e)(d) “Interested trustee” means an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party as defined in paragraph (d) (e), or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.~~

(f) “Unitrust amount” means the amount determined by multiplying the fair market value of the assets as defined in paragraph (b) by the percentage calculated under paragraph (2)(b).

(2) A trustee may, without court approval, convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(a) The trustee adopts a written statement regarding trust distributions that provides:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, and indicates the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

2. In the case of a trust being administered as a total return unitrust, that:

a. Future distributions from the trust will be net income rather than unitrust amounts; or

b. The percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed, and indicates the manner in which the new unitrust amount will be calculated and the method in which the new fair market value of the trust will be determined;

(b) The trustee determines the terms of the unitrust under one of the following methods:

1. A disinterested ~~The trustee determines~~, or if there is no trustee other than an interested trustee, the interested trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the interested trustee:

a. The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent;

b. The method to be used in determining the fair market value of the trust; and

c. Which assets, if any, are to be excluded in determining the unitrust amount; or

2. The interested trustee or disinterested trustee administers the trust such that:

a. The percentage used to calculate the unitrust amount is 50 percent of the applicable federal rate as defined in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the percentage calculated exceeds 5 percent, the unitrust percentage shall be 5 percent and if the percentage calculated is less than 3 percent, the unitrust percentage shall be 3 percent; and

b. The fair market value of the trust shall be determined at least annually on an asset-by-asset basis, reasonably and in good faith, in accordance with the provisions of s. 738.202(5), except the following property shall not be included in determining the value of the trust:

(I) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or have had the right to possess or control (other than in his or her capacity as trustee of the trust), and instead the right of occupancy or the right to possession and control shall be deemed to be the unitrust amount with respect to such property; however, the unitrust amount shall be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year.

(II) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment shall be distributable to such beneficiary.

(III) Any asset while held in a testator's estate;

(c) The trustee sends written notice of its intention to take such action, along with copies of such written statement and this section, and, if applicable, the determinations of either the trustee or the disinterested person to:

1. The grantor of the trust, if living.
2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
3. All living persons who would receive distributions of principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subparagraph 2. were deceased.
4. All persons acting as advisers or protectors of the trust.

Notice under this paragraph shall be served informally, in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. Notice may be served on a legal representative or natural guardian of a person without the filing of any proceeding or approval of any court;

(d) At least one person receiving notice under each of subparagraphs (c)2. and 3. is legally competent; and

(e) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 60 days after service receipt of such notice. An objection under this section may be executed by a legal represent-

ative or natural guardian of a person without the filing of any proceeding or approval of any court.

(3) If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine a fair market value of the trust but does not have the ability to or elects not to do it under subsection (2), the trustee may petition the circuit court for such order as the trustee deems appropriate. In that event, the court, in its own discretion or on the petition of such trustee or any person having an income or remainder interest in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary for the court to make a determination hereunder.

(4) All determinations made pursuant to sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable and made in good faith. Such determination shall be conclusively presumed to have been made reasonably and in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 737.307. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.

~~(5) The unitrust amount shall not be less than the net income of the trust, determined without regard to the provisions of subsection (6), for:~~

~~(a) A trust for which a marital deduction has been taken for federal tax purposes under the Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523, during the lifetime of the spouse for whom the trust was created; or~~

~~(b) A trust to which the generation-skipping transfer tax due under the Internal Revenue Code, 26 U.S.C. s. 2601 does not apply by reason of any effective date or transition rule.~~

~~Paragraph (a) will not apply to any trust to the extent that the use of a total return unitrust is recognized for federal tax purposes under the Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523. Paragraph (b) will not apply to any trust to the extent that the use of a total return unitrust is recognized for federal tax purposes under the Internal Revenue Code, 26 U.S.C. s. 2601.~~

~~(5)(6)~~ Following the conversion of an income trust to a total return unitrust, the trustee:

(a) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

(b) May allocate to trust income for each taxable year of the trust, or portion thereof:

1. Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to

trust income, as determined under the provisions of this chapter without regard to this section and s. 738.104, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

2. Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph 1., allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

~~(6)~~(7) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(a) The effective date of the conversion.

(b) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

(c) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

(d) If the trust is reconverted to an income trust, the effective date of such reconversion.

(e) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

~~(7)~~(8) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

~~(9) In the case of a trust for which a marital deduction has been taken for federal tax purposes under the Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during his or her lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary, unless the use of a total return unitrust is recognized for federal tax purposes under the Internal Revenue Code, 26 U.S.C. s. 2056 or s. 2523.~~

~~(8)~~(10) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain, under subsection ~~(9)~~ (11), an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust

amount. If a court determines that the trustee or disinterested person has not acted in good faith in taking or failing to take any action under this section, the provisions of s. 738.105(3) apply.

~~(9)~~(11) If a majority in interest of either the income or remainder beneficiaries of an income trust has delivered to the trustee a written objection to the amount of the income distributions of the trust, and, if the trustee has failed to resolve the objection to the satisfaction of the objecting beneficiaries within 6 months from the receipt of such written objection, then the objecting beneficiaries may petition the court in accordance with subsection (3).

~~(10)~~(12) This section shall be construed as pertaining to the administration of a trust and is applicable ~~shall be available~~ to any trust that is administered either in this state or under Florida law unless:

(a) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(b) The trust is a trust described in the Internal Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), ~~s. 1361(d)~~, s. 2702(a)(3), or s. 2702(b);

(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust:

1. That is not subject to an ascertainable standard under the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and exceeds in any calendar year the amount set forth in the Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

2. A power of withdrawal over the trust that can be exercised to discharge a duty of support he or she possesses;

(d) The governing instrument expressly prohibits use of this section by specific reference to the section. A provision in the governing instrument that, "The provisions of section 738.1041, Florida Statutes, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust," or similar words reflecting such intent shall be sufficient to preclude the use of this section; or

(e) The trust is a trust with respect to which a trustee currently possesses the power to adjust under s. 738.104.

(11) The grantor of a trust may create an express total return unitrust which will become effective as provided in the trust document without requiring a conversion under this section. An express total return unitrust created by the grantor of the trust shall be treated as a unitrust under this section only if the terms of the trust document contain all of the following provisions:

(a) That distributions from the trust will be unitrust amounts and the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

(b) The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent.

(c) The method to be used in determining the fair market value of the trust.

(d) Which assets, if any, are to be excluded in determining the unitrust amount.

Section 7. Subsection (1) of section 738.303, Florida Statutes, is amended to read:

738.303 Apportionment when income interest ends.—

(1) For purposes of this section, “undistributed income” means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust. In the case of a trust being administered as a unitrust under s. 738.1041, the term “undistributed income” means the prorated unitrust amount computed on a daily basis through the date on which the income interest ends.

Section 8. Subsection (3) of section 738.401, Florida Statutes, is amended, subsection (7) is renumbered as subsection (8) and amended, and a new subsection (7) is added to said section, to read:

738.401 Character of receipts.—

(3) Except as otherwise provided in this section, a trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity.

(c) Money received in total or partial liquidation of the entity.

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed represents short-term or long-term capital gain realized within the entity.

(7) The following special rules shall apply to moneys or property received by a private trustee from entities described in this subsection:

(a) Moneys or property received from a targeted entity that is not an investment entity which do not exceed the trust’s pro rata share of the undistributed cumulative net income of the targeted entity during the time an ownership interest in the targeted entity was held by the trust shall be allocated to income. The balance of moneys or property received from a targeted entity shall be allocated to principal.

(b) If trust assets include any interest in an investment entity, the designated amount of moneys or property received from the investment entity

shall be treated by the trustee in the same manner as if the trustee had directly held the trust's pro rata share of the assets of the investment entity attributable to the distribution of such designated amount. Thereafter, distributions shall be treated as principal.

(c) For purposes of this subsection, the following definitions shall apply:

1. "Cumulative net income" means the targeted entity's net income as determined using the method of accounting regularly used by the targeted entity in preparing its financial statements, or if no financial statements are prepared, the net book income computed for federal income tax purposes, for every year an ownership interest in the entity is held by the trust. The trust's pro rata share shall be the cumulative net income multiplied by the percentage ownership of the trust.

2. "Designated amount" means moneys or property received from an investment entity during any year that is equal to the amount of the distribution that does not exceed the greater of:

a. The amount of income of the investment entity for the current year, as reported to the trustee by the investment entity for federal income tax purposes; or

b. The amount of income of the investment entity for the current year and the prior 2 years, as reported to the trustee by the investment entity for federal income tax purposes, less any distributions of moneys or property made by the investment entity to the trustee during the prior 2 years.

3. "Investment entity" means a targeted entity that normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.

4. "Private trustee" means a trustee who is an individual, but only if the trustee is unable to utilize the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104. A bank, trust company, or other commercial trustee shall not be considered to be a private trustee.

5. "Targeted entity" means any entity that is treated as a partnership, subchapter S corporation, or disregarded entity pursuant to the Internal Revenue Code of 1986, as amended, other than an entity described in s. 738.403.

6. "Undistributed cumulative net income" means the trust's pro rata share of cumulative net income, less all prior distributions from the targeted entity to the trust that have been allocated to income.

(d) This subsection shall not be construed to modify or change any of the provisions of ss. 738.705 and 738.706 relating to income taxes.

(8)(7) A trustee may rely upon a statement made by an entity about the source or character of a distribution, about the amount of profits of a targeted entity, or about the nature and value of assets of an investment entity

if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Section 9. This act shall take effect July 1, 2005.

Approved by the Governor May 26, 2005.

Filed in Office Secretary of State May 26, 2005.