

Committee Substitute for Senate Bill No. 1170

An act relating to the Florida Trust Code; creating parts I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII of chapter 736, F.S.; providing a short title; providing general provisions and definitions; providing for judicial proceedings; providing for representations; providing for creation, validity, modification, and termination of trusts; providing for creditors' claims; providing for spendthrift, discretionary, and revocable trusts; providing for the office of trustee; providing for powers and duties of the trustee; providing for trust investments; providing for liability of trustee and rights of persons dealing with trustee; providing for rules of construction; providing for charitable trusts; providing miscellaneous provisions; creating s. 518.117, F.S.; authorizing investment of certain fiduciary funds by certain fiduciaries; amending s. 660.25, F.S.; providing a definition of the term "investment instrument"; amending s. 660.417, F.S.; revising provisions relating to investment of fiduciary funds in investment instruments by certain banks or trust companies; creating s. 689.175, F.S.; abolishing the worthier title doctrine; providing construction of certain instrument language; amending s. 731.103, F.S.; correcting a cross-reference; providing construction relating to establishment of death by certain evidence under certain circumstances; creating s. 731.1035, F.S.; providing for application of rules of evidence in civil actions to certain proceedings; amending s. 731.201, F.S.; revising definitions; conforming terms and correcting cross-references; amending s. 731.303, F.S.; specifying nonapplication of certain orders relating to powers of revocation and powers of appointment; revising provisions relating to representation by a holder of a power of appointment; amending s. 732.513, F.S.; deleting a ground protecting a devise's validity; amending s. 732.603, F.S.; revising provisions relating to antilapse, deceased devisees, and class gifts; amending s. 744.331, F.S.; revising provisions relating to orders determining incapacity; amending s. 744.441, F.S.; revising authority of certain guardians to prosecute or defend claims or proceedings for certain purposes; specifying duties of a court; creating s. 744.462, F.S.; providing requirements for judicial determinations relating to alternatives to guardianship; providing duties of a court; amending ss. 497.458, 607.0802, 617.0802, 660.46, 660.418, 689.071, 689.075, 709.08, 721.08, 721.53, 732.2075, 732.604, 732.611, 733.212, 733.602, 733.805, 733.817, 738.104, 738.1041, 738.202, 739.102, and 744.361, F.S., to conform terms and correct cross-references; repealing ss. 737.101, 737.105, 737.106, 737.111, 737.115, and 737.116, constituting part I of ch. 737, F.S., relating to trust registration; repealing ss. 737.201, 737.202, 737.203, 737.2035, 737.204, 737.2041, 737.205, 737.206, 737.2065, 737.207, 737.208, and 737.209, constituting part II of ch. 737, F.S., relating to jurisdiction of courts; repealing ss. 737.301, 737.302, 737.303, 737.3035, 737.304, 737.305, 737.3053, 737.3054, 737.3055, 737.306, 737.3061, 737.307, 737.308, and 737.309, constituting part III of ch. 737, F.S., relating to duties and liabilities of trustees;

repealing ss. 737.401, 737.402, 737.4025, 737.403, 737.4031, 737.4032, 737.4033, 737.404, 737.405, and 737.406, constituting part IV of ch. 737, F.S., relating to powers of trustees; repealing ss. 737.501, 737.502, 737.503, 737.504, 737.505, 737.506, 737.507, 737.508, 737.509, 737.510, 737.511, and 737.512, constituting part V of ch. 737, F.S., relating to charitable trusts; repealing ss. 737.6035, 737.621, 737.622, 737.623, 737.624, 737.625, 737.626, and 737.627, consisting of part VI of ch. 737, F.S., relating to rules of construction of trust administration; providing an effective date.

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

Section 1. Part I of chapter 736, Florida Statutes, consisting of sections 736.0101, 736.0102, 736.0103, 736.0104, 736.0105, 736.0106, 736.0107, 736.0108, 736.0109, 736.0110, 736.0111, and 736.0112, is created to read:

PART I

GENERAL PROVISIONS AND DEFINITIONS

736.0101 Short title.—This chapter may be cited as the “Florida Trust Code” and for purposes of this chapter is referred to as the “code.”

736.0102 Scope.—This code applies to express trusts, charitable or non-charitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust. This code does not apply to constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

736.0103 Definitions.—Unless the context otherwise requires, in this code:

- (1) “Action,” with respect to an act of a trustee, includes a failure to act.
- (2) “Affiliate” means any person or entity that directly or indirectly through one or more intermediaries owns or controls, is owned or controlled by, or is under common control or ownership with, the fiduciary. An affiliate may include, but is not limited to, an investment adviser, administrator, broker, transfer agent, placement agent, servicing agent, registrar, custodian, underwriter, sponsor, distributor, or manager.
- (3) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of s. 2041(b)(1)(A) or s. 2514(c)(1) of the Internal Revenue Code of 1986, as amended.

(4) “Beneficiary” means a person who:

(a) Has a present or future beneficial interest in a trust, vested or contingent; or

(b) Holds a power of appointment over trust property in a capacity other than that of trustee.

(5) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1).

(6) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance that relates to protection of the environment or human health.

(7) “General power of appointment” means a power of appointment exercisable in favor of the holder of the power, the power holder’s creditors, the power holder’s estate, or the creditors of the power holder’s estate.

(8) “Guardian of the person” means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or an incapacitated adult. The term does not include a guardian ad litem.

(9) “Guardian of the property” means a person appointed by the court to administer the estate of a minor or incapacitated adult.

(10) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(11) “Jurisdiction” with respect to a geographic area, includes a state or country.

(12) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

(a) Exercisable by a trustee and limited by an ascertainable standard; or

(b) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13) “Property” means anything that may be the subject of ownership, real or personal, legal or equitable, or any interest therein.

(14) “Qualified beneficiary” means a living beneficiary who, on the date the beneficiary’s qualification is determined:

(a) Is a distributee or permissible distributee of trust income or principal;

(b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) terminated on that date without causing the trust to terminate; or

(c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.

(15) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(16) “Settlor” means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(17) “Spendthrift provision” means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(18) “State” means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(19) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(20) “Trust instrument” means an instrument executed by a settlor that contains terms of the trust, including any amendments to the trust.

(21) “Trustee” means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee.

736.0104 Knowledge.—

(1) Subject to subsection (2), a person has knowledge of a fact if the person:

(a) Has actual knowledge of the fact;

(b) Has received a notice or notification of the fact; or

(c) Has reason to know the fact from all the other facts and circumstances known to the person at the time in question.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act on matters involving the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act on matters involving the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the trust would be materially affected by the information.

736.0105 Default and mandatory rules.—

(1) Except as otherwise provided in the terms of the trust, this code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over any provision of this code except:

(a) The requirements for creating a trust.

(b) The duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(c) The requirement that a trust and its terms be for the benefit of the trust's beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(d) The periods of limitation for commencing a judicial proceeding.

(e) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(f) The requirements under s. 736.0108(1) for the designation of a principal place of administration of the trust.

(g) The jurisdiction and venue provisions in ss. 736.0202, 736.0203, and 736.0204.

(h) The restrictions on the designation of representative under s. 736.0306.

(i) The formalities required under s. 736.0403(2) for the execution of a trust.

(j) The power of the court to modify or terminate a trust under ss. 736.0410-736.04115, except as provided in s. 736.04115(3)(b), and under ss. 736.0413, 736.0415, and 736.0416.

(k) The ability to modify a trust under s. 736.0412, except as provided in s. 736.0412(4)(b).

(l) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in part V.

(m) The trustee's duty under s. 736.05053 to pay expenses and obligations of the settlor's estate.

(n) The trustee's duty under s. 736.05055 to file a notice of trust at the settlor's death.

(o) The right of a trustee under s. 736.0701 to decline a trusteeship and the right of a trustee under s. 736.0705 to resign a trusteeship.

(p) The power of the court under s. 736.0702 to require, dispense with, modify, or terminate a bond.

(q) The power of the court under s. 736.0708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

(r) The duty under s. 736.0813(1)(a) and (b) to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their rights to trust accountings.

(s) The duty under s. 736.0813(1)(c) and (d) to provide a complete copy of the trust instrument and to account to qualified beneficiaries.

(t) The duty under s. 736.0813(1)(e) to respond to the request of a qualified beneficiary of an irrevocable trust for relevant information about the assets and liabilities of the trust and the particulars relating to trust administration.

(u) The effect of an exculpatory term under s. 736.1011.

(v) The rights under ss. 736.1013-736.1017 of a person other than a trustee or beneficiary.

(w) The effect of a penalty clause for contesting a trust under s. 736.1108.

736.0106 Common law of trusts; principles of equity.—The common law of trusts and principles of equity supplement this code, except to the extent modified by this code or another law of this state.

736.0107 Governing law.—The meaning and effect of the terms of a trust are determined by:

(1) The law of the jurisdiction designated in the terms of the trust, provided there is a sufficient nexus to the designated jurisdiction at the time of the creation of the trust or during the trust administration, including, but not limited to, the location of real property held by the trust or the residence or location of an office of the settlor, trustee, or any beneficiary; or

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction where the settlor resides at the time the trust is first created.

Notwithstanding subsection (1) or subsection (2), a designation in the terms of a trust is not controlling as to any matter for which the designation would be contrary to a strong public policy of this state.

736.0108 Principal place of administration.—

(1) Terms of a trust designating the principal place of administration of the trust are valid only if there is a sufficient connection with the designated jurisdiction. Without precluding other means for establishing a sufficient connection, terms of a trust designating the principal place of administration are valid and controlling if:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(b) All or part of the administration occurs in the designated jurisdiction.

(2) Unless otherwise validly designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept or, if the trustee has no place of business, the trustee's residence. In the case of cotrustees, the principal place of administration is:

(a) The usual place of business of the corporate trustee, if there is only one corporate cotrustee;

(b) The usual place of business or residence of the individual trustee who is a professional fiduciary, if there is only one such person and no corporate cotrustee; or otherwise

(c) The usual place of business or residence of any of the cotrustees as agreed on by the cotrustees.

(3) Notwithstanding any other provision of this section, the principal place of administration of a trust, for which a bank, association, or trust company organized under the laws of this state or bank or savings association organized under the laws of the United States with its main office in this state has been appointed trustee, shall not be moved or otherwise affected solely because the trustee engaged in an interstate merger transaction with an out-of-state bank pursuant to s. 658.2953 in which the out-of-state bank is the resulting bank.

(4) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes and its administration.

(5) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (4), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(6) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) The date, not less than 60 days after the notice is provided, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(7) The authority of a trustee to act under this section without court approval to transfer a trust's principal place of administration is suspended

if a qualified beneficiary files a lawsuit objecting to the proposed transfer on or before the date specified in the notice. The suspension is effective until the lawsuit is dismissed or withdrawn.

(8) In connection with a transfer of the trust's principal place of administration, the trustee may transfer any of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to s. 736.0704.

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.

(2) Notice otherwise required under this code or a document otherwise required to be sent under this code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this code or the sending of a document under this code may be waived by the person to be notified or to whom the document is to be sent.

(4) Notice of a judicial proceeding must be given as provided in the Florida Rules of Civil Procedure.

736.0110 Others treated as qualified beneficiaries.—

(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this code if the charitable organization, on the date the charitable organization's qualification is being determined:

(a) Is a distributee or permissible distributee of trust income or principal;

(b) Would be a distributee or permissible distributee of trust income or principal on termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in s. 736.0408 or s. 736.0409 has the rights of a qualified beneficiary under this code.

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

736.0111 Nonjudicial settlement agreements.—

(1) For purposes of this section, the term “interested persons” means persons whose interest would be affected by a settlement agreement.

(2) Except as otherwise provided in subsection (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) A nonjudicial settlement agreement among the trustee and trust beneficiaries is valid only to the extent the terms and conditions could be properly approved by the court. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this code, including, but not limited to, terminating or modifying a trust in an impermissible manner.

(4) Matters that may be resolved by a nonjudicial settlement agreement include:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee’s report or accounting.

(c) The direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.

(d) The resignation or appointment of a trustee and the determination of a trustee’s compensation.

(e) The transfer of a trust’s principal place of administration.

(f) The liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve or disapprove a nonjudicial settlement agreement.

736.0112 Qualification of foreign trustee.—Unless otherwise doing business in this state, local qualification by a foreign trustee is not required for the trustee to receive distribution from a local estate. Nothing in this chapter shall affect the provisions of s. 660.41.

Section 2. Part II of chapter 736, Florida Statutes, consisting of sections 736.0201, 736.0202, 736.0203, 736.0204, 736.0205, 736.0206, and 736.0207, is created to read:

PART II

JUDICIAL PROCEEDINGS

736.0201 Role of court in trust proceedings.—

(1) Except as provided in subsection (5) and s. 736.0206, proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.

(2) The court may intervene in the administration of a trust to the extent the court's jurisdiction is invoked by an interested person or as provided by law.

(3) A trust is not subject to continuing judicial supervision unless ordered by the court.

(4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:

(a) Determine the validity of all or part of a trust;

(b) Appoint or remove a trustee;

(c) Review trustees' fees;

(d) Review and settle interim or final accounts;

(e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(f) Obtain a declaration of rights; or

(g) Determine any other matters involving trustees and beneficiaries.

(5) A proceeding for the construction of a testamentary trust may be filed in the probate proceeding for the testator's estate. The proceeding shall be governed by the Florida Probate Rules.

736.0202 Jurisdiction over trustee and beneficiary.—

(1) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(2) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the distribution.

(3) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

736.0203 Subject-matter jurisdiction.—The circuit court has original jurisdiction in this state of all proceedings arising under this code.

736.0204 Venue.—Venue for actions and proceedings concerning trusts, including those under s. 736.0201, may be laid in:

- (1) Any county where the venue is proper under chapter 47;
- (2) Any county where the beneficiary suing or being sued resides or has its principal place of business; or
- (3) The county where the trust has its principal place of administration.

736.0205 Trust proceedings; dismissal of matters relating to foreign trusts.—Over the objection of a party, the court shall not entertain proceedings under s. 736.0201 for a trust registered, or having its principal place of administration, in another state unless all interested parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state where the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

736.0206 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.—

(1) After notice to all interested persons, the court may review the propriety of the employment by a trustee of any person, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of any compensation paid to that person or to the trustee.

(2) If the settlor's estate is being probated, and the settlor's trust or the trustee of the settlor's trust is a beneficiary under the settlor's will, the trustee, any person employed by the trustee, or any interested person may have the propriety of employment and the reasonableness of the compensation of the trustee or any person employed by the trustee determined in the probate proceeding.

(3) The burden of proof of the propriety of the employment and the reasonableness of the compensation shall be on the trustee and the person employed by the trustee. Any person who is determined to have received excessive compensation from a trust for services rendered may be ordered to make appropriate refunds.

(4) Court proceedings to determine reasonable compensation of a trustee or any person employed by a trustee, if required, are a part of the trust administration process. The costs, including attorney's fees, of the person assuming the burden of proof of propriety of the employment and reasonableness of the compensation shall be determined by the court and paid from the assets of the trust unless the court finds the compensation paid or requested to be substantially unreasonable. The court shall direct from which part of the trust assets the compensation shall be paid.

(5) The court may determine reasonable compensation for a trustee or any person employed by a trustee without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the trust. The court shall direct from which part of the trust assets the fee shall be paid.

(6) Persons given notice as provided in this section shall be bound by all orders entered on the complaint.

(7) In a proceeding pursuant to subsection (2), the petitioner may serve formal notice as provided in the Florida Probate Rules, and such notice shall be sufficient for the court to acquire jurisdiction over the person receiving the notice to the extent of the person's interest in the trust.

736.0207 Trust contests.—An action to contest the validity of all or part of a trust may not be commenced until the trust becomes irrevocable, except this section does not prohibit such action by the guardian of the property of an incapacitated settlor.

Section 3. Part III of chapter 736, Florida Statutes, consisting of sections 736.0301, 736.0302, 736.0303, 736.0304, 736.0305, and 736.0306, is created to read:

PART III

REPRESENTATION

736.0301 Representation; basic effect.—

(1) Notice, information, accountings, or reports given to a person who may represent and bind another person under this part may serve as a substitute for and have the same effect as notice, information, accountings, or reports given directly to the other person.

(2) Actions taken by a person who represents the interests of another person under this part are binding on the person whose interests are represented to the same extent as if the actions had been taken by the person whose interests are represented.

(3) Except as otherwise provided in s. 736.0602, a person under this part who represents a settlor lacking capacity may receive notice and give a binding consent on the settlor's behalf.

(4) A trustee is not liable for giving notice, information, accountings, or reports to a beneficiary who is represented by another person under this part and nothing in this part prohibits the trustee from giving notice, information, accountings, or reports to the person represented.

736.0302 Representation by holder of power of appointment.—

(1) The holder of a power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

(2) Subsection (1) does not apply to:

(a) Any matter determined by the court to involve fraud or bad faith by the trustee;

(b) A power of a trustee to distribute trust property; or

(c) A power of appointment held by a person while the person is the sole trustee.

736.0303 Representation by fiduciaries and parents.—To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A guardian of the property may represent and bind the estate that the guardian of the property controls.

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal.

(3) A trustee may represent and bind the beneficiaries of the trust.

(4) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(5) A parent may represent and bind the parent's unborn child, or the parent's minor child if a guardian of the property for the minor child has not been appointed.

736.0304 Representation by person having substantially identical interest.—Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

736.0305 Appointment of representative.—

(1) If the court determines that an interest is not represented under this part, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. If not precluded by a conflict of interest, a representative may be appointed to represent several persons or interests.

(2) A representative may act on behalf of the individual represented with respect to any matter arising under this code, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a representative may consider general benefits accruing to the living members of the represented individual's family.

736.0306 Designated representative.—

(1) If authorized in the trust instrument, one or more persons may be designated to represent and bind a beneficiary and receive any notice, information, accounting, or report.

(2) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind a beneficiary while that person is serving as trustee.

(3) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind another beneficiary if the person designated also is a beneficiary, unless:

(a) That person was named by the settlor; or

(b) That person is the beneficiary's spouse or a grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse.

(4) No person designated, as provided in subsection (1) is liable to the beneficiary whose interests are represented, or to anyone claiming through that beneficiary, for any actions or omissions to act made in good faith.

Section 4. Part IV of chapter 736, Florida Statutes, consisting of sections 736.0401, 736.0402, 736.0403, 736.0404, 736.0405, 736.0406, 736.0407, 736.0408, 736.0409, 736.0410, 736.0411, 736.0412, 736.0413, 736.0414, 736.0415, 736.0416, and 736.0417, is created to read:

PART IV

CREATION, VALIDITY, MODIFICATION, AND TERMINATION

736.0401 Methods of creating trust.—A trust may be created by:

(1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect on the settlor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) Exercise of a power of appointment in favor of a trustee.

736.0402 Requirements for creation.—

(1) A trust is created only if:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intent to create the trust.

(c) The trust has a definite beneficiary or is:

1. A charitable trust;

2. A trust for the care of an animal, as provided in s. 736.0408; or

3. A trust for a noncharitable purpose, as provided in s. 736.0409.

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

736.0403 Trusts created in other jurisdictions; formalities required for revocable trusts.—

(1) A trust not created by will is validly created if the creation of the trust complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation, the settlor was domiciled.

(2) Notwithstanding subsection (1):

(a) No trust or confidence of or in any messuages, lands, tenements, or hereditaments shall arise or result unless the trust complies with the provisions of s. 689.05.

(b) The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution of a will in this state. For purposes of this subsection, the term “testamentary aspects” means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor’s estate.

(3) Paragraph (2)(b) does not apply to trusts established as part of an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an individual retirement account as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan that is qualified under s. 401 of the Internal Revenue Code of 1986, as amended.

(4) Paragraph (2)(b) applies to trusts created on or after the effective date of this code. Section 737.111, as in effect prior to the effective date of this code, continues to apply to trusts created before the effective date of this code.

736.0404 Trust purposes.—A trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

736.0405 Charitable purposes; enforcement.—

(1) A trust may be created for charitable purposes. Charitable purposes include, but are not limited to, the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intent to the extent such intent can be ascertained.

(3) The settlor of a charitable trust, among others, has standing to enforce the trust.

736.0406 Effect of fraud, duress, mistake, or undue influence.—A trust is void if the creation of the trust is procured by fraud, duress, mistake, or undue influence. Any part of the trust is void if procured by such means, but the remainder of the trust not procured by such means is valid if the remainder is not invalid for other reasons.

736.0407 Evidence of oral trust.—Except as required by s. 736.0403 or a law other than this code, a trust need not be evidenced by a trust instrument but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

736.0408 Trust for care of an animal.—

(1) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to the intended use of the property, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise as part of the settlor's estate.

736.0409 Noncharitable trust without ascertainable beneficiary.—Except as otherwise provided in s. 736.0408 or by another provision of law, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to the intended use of the property, except to the extent the court determines

that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise as part of the settlor's estate.

736.0410 Modification or termination of trust; proceedings for disapproval of nonjudicial acts.—

(1) In addition to the methods of termination prescribed by ss. 736.04113-736.0414, a trust terminates to the extent the trust expires or is revoked or is properly distributed pursuant to the terms of the trust.

(2) A proceeding to disapprove a proposed modification or termination under s. 736.0412 or a trust combination or division under s. 736.0417 may be commenced by any beneficiary.

(3) A proceeding to disapprove a proposed termination under s. 736.0414(1) may be commenced by any qualified beneficiary.

736.04113 Judicial modification of irrevocable trust when modification is not inconsistent with settlor's purpose.—

(1) Upon the application of a trustee of the trust or any qualified beneficiary, a court at any time may modify the terms of a trust that is not then revocable in the manner provided in subsection (2), if:

(a) The purposes of the trust have been fulfilled or have become illegal, impossible, wasteful, or impracticable to fulfill;

(b) Because of circumstances not anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust; or

(c) A material purpose of the trust no longer exists.

(2) In modifying a trust under this section, a court may:

(a) Amend or change the terms of the trust, including terms governing distribution of the trust income or principal or terms governing administration of the trust;

(b) Terminate the trust in whole or in part;

(c) Direct or permit the trustee to do acts that are not authorized or that are prohibited by the terms of the trust; or

(d) Prohibit the trustee from performing acts that are permitted or required by the terms of the trust.

(3) In exercising discretion to modify a trust under this section:

(a) The court shall consider the terms and purposes of the trust, the facts and circumstances surrounding the creation of the trust, and extrinsic evidence relevant to the proposed modification.

(b) The court shall consider spendthrift provisions as a factor in making a decision but the court is not precluded from modifying a trust because the trust contains spendthrift provisions.

(4) The provisions of this section are in addition to, and not in derogation of, rights under the common law to modify, amend, terminate, or revoke trusts.

736.04115 Judicial modification of irrevocable trust when modification is in best interest of beneficiaries.—

(1) Without regard to the reasons for modification provided in s. 736.04113, if compliance with the terms of a trust is not in the best interests of the beneficiaries, upon the application of a trustee or any qualified beneficiary, a court may at any time modify a trust that is not then revocable as provided in s. 736.04113(2).

(2) In exercising discretion to modify a trust under this section:

(a) The court shall exercise discretion in a manner that conforms to the extent possible with the intent of the settlor, taking into account the current circumstances and best interests of the beneficiaries.

(b) The court shall consider the terms and purposes of the trust, the facts and circumstances surrounding the creation of the trust, and extrinsic evidence relevant to the proposed modification.

(c) The court shall consider spendthrift provisions as a factor in making a decision but the court is not precluded from modifying a trust because the trust contains spendthrift provisions.

(3) This section shall not apply to:

(a) Any trust created prior to January 1, 2001.

(b) Any trust created after December 31, 2000, if:

1. Under the terms of the trust, all beneficial interests in the trust must vest or terminate within the period prescribed by the rule against perpetuities in s. 689.225(2), notwithstanding s. 689.225(2)(f).

2. The terms of the trust expressly prohibit judicial modification.

(4) For purposes of subsection (3), a revocable trust shall be treated as created when the right of revocation terminates.

(5) The provisions of this section are in addition to, and not in derogation of, rights under the common law to modify, amend, terminate, or revoke trusts.

736.0412 Nonjudicial modification of irrevocable trust.—

(1) After the settlor's death, a trust may be modified at any time as provided in s. 736.04113(2) upon the unanimous agreement of the trustee and all qualified beneficiaries.

(2) Modification of a trust as authorized in this section is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(3) An agreement to modify a trust under this section is binding on a beneficiary whose interest is represented by another person under part III of this code.

(4) This section shall not apply to:

(a) Any trust created prior to January 1, 2001.

(b) Any trust created after December 31, 2000, if, under the terms of the trust, all beneficial interests in the trust must vest or terminate within the period prescribed by the rule against perpetuities in s. 689.225(2), notwithstanding s. 689.225(2)(f), unless the terms of the trust expressly authorize nonjudicial modification.

(c) Any trust for which a charitable deduction is allowed or allowable under the Internal Revenue Code until the termination of all charitable interests in the trust.

(5) For purposes of subsection (4), a revocable trust shall be treated as created when the right of revocation terminates.

(6) The provisions of this section are in addition to, and not in derogation of, rights under the common law to modify, amend, terminate, or revoke trusts.

736.0413 Cy pres.—

(1) If a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the court may apply the doctrine of cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(2) A proceeding to modify or terminate a trust under this section may be commenced by a settlor, a trustee, or any qualified beneficiary.

736.0414 Modification or termination of uneconomic trust.—

(1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$50,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(2) Upon application of a trustee or any qualified beneficiary, the court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the

trust. The trustee may enter into agreements or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and the trustee and to carry out the intent and purposes of the trust.

(4) The existence of a spendthrift provision in the trust does not make this section inapplicable unless the trust instrument expressly provides that the trustee may not terminate the trust pursuant to this section.

(5) This section does not apply to an easement for conservation or preservation.

736.0415 Reformation to correct mistakes.—Upon application of a settlor or any interested person, the court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if it is proved by clear and convincing evidence that both the accomplishment of the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. In determining the settlor's original intent, the court may consider evidence relevant to the settlor's intent even though the evidence contradicts an apparent plain meaning of the trust instrument.

736.0416 Modification to achieve settlor's tax objectives.—Upon application of any interested person, to achieve the settlor's tax objectives the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect.

736.0417 Combination and division of trusts.—

(1) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trusts or trust, respectively.

(2) Subject to the terms of the trust, the trustee may take into consideration differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective. The effective date of the severance may be retroactive to a date before the date on which the trustee exercises such power.

Section 5. Part V of chapter 736, Florida Statutes, consisting of sections 736.0501, 736.0502, 736.0503, 736.0504, 736.0505, 736.05053, 736.05055, 736.0506, and 736.0507, is created to read:

PART V

CREDITORS' CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

736.0501 Rights of beneficiary's creditor or assignee.—To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may

authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

736.0502 Spendthrift provision.—

(1) A spendthrift provision is valid only if the provision restrains both voluntary and involuntary transfer of a beneficiary's interest. This subsection does not apply to any trust in existence on the effective date of this code.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before receipt of the interest or distribution by the beneficiary.

(4) A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment.

736.0503 Exceptions to spendthrift provision.—

(1) As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or any other state.

(2) To the extent provided in subsection (3), a spendthrift provision is unenforceable against:

(a) A beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance.

(b) A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust.

(c) A claim of this state or the United States to the extent a law of this state or a federal law so provides.

(3) Except as otherwise provided in this subsection, a claimant against which a spendthrift provision may not be enforced may obtain from a court, or pursuant to the Uniform Interstate Family Support Act, an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. Notwithstanding this subsection, the remedies provided in this subsection apply to a claim by a beneficiary's child, spouse, former spouse, or a judgment creditor described in paragraph (2)(a) or paragraph (2)(b) only as a last resort upon an initial showing that traditional methods of enforcing the claim are insufficient.

736.0504 Discretionary trusts; effect of standard.—

(1) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(a) The discretion is expressed in the form of a standard of distribution;
or

(b) The trustee has abused the discretion.

(2) If the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee.

(3) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

736.0505 Creditors' claims against settlor.—

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) The property of a revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

(2) For purposes of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

(b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in:

1. Section 2041(b)(2) or s. 2514(e); or
2. Section 2503(b),

of the Internal Revenue Code of 1986, as amended.

736.05053 Trustee's duty to pay expenses and obligations of settlor's estate.—

(1) A trustee of a trust described in s. 733.707(3) shall pay to the personal representative of a settlor's estate any amounts that the personal representative certifies in writing to the trustee are required to pay the expenses of the administration and obligations of the settlor's estate. Payments made by a trustee, unless otherwise provided in the trust instrument, must be charged as expenses of the trust without a contribution from anyone. The interests of all beneficiaries of such a trust are subject to the provisions of this subsection; however, the payments must be made from assets, property, or the proceeds of the assets or property, other than assets proscribed in s. 733.707(3), that are included in the settlor's gross estate for federal estate tax purposes.

(2) Unless a settlor provides by will, or designates in a trust described in s. 733.707(3) funds or property passing under the trust to be used as designated, the expenses of the administration and obligations of the settlor's estate must be paid from the trust in the following order:

(a) Property of the residue of the trust remaining after all distributions that are to be satisfied by reference to a specific property or type of property, fund, or sum.

(b) Property that is not to be distributed from specified or identified property or a specified or identified item of property.

(c) Property that is to be distributed from specified or identified property or a specified or identified item of property.

(3) Trust distributions that are to be satisfied from specified or identified property must be classed as distributions to be satisfied from the general assets of the trust and not otherwise disposed of in the trust instrument on the failure or insufficiency of funds or property from which payment should be made, to the extent of the insufficiency. Trust distributions given for valuable consideration abate with other distributions of the same class only to the extent of the excess over the value of the consideration until all others of the same class are exhausted. Except as provided in this section, trust distributions abate equally and ratably and without preference or priority between real and personal property. When a specified or identified item of property that has been designated for distribution in the trust instrument or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the beneficiary whose property has been sold or taken. Before distribution, the trustee shall determine the amounts of the respective contributions and such amounts must be paid or withheld before distribution is made.

(4) The trustee shall pay the expenses of trust administration, including compensation of trustees and attorneys of the trustees, before and in preference to the expenses of the administration and obligations of the settlor's estate.

736.05055 Notice of trust.—

(1) Upon the death of a settlor of a trust described in s. 733.707(3), the trustee must file a notice of trust with the court of the county of the settlor's domicile and the court having jurisdiction of the settlor's estate.

(2) The notice of trust must contain the name of the settlor, the settlor's date of death, the title of the trust, if any, the date of the trust, and the name and address of the trustee.

(3) If the settlor's probate proceeding has been commenced, the clerk shall notify the trustee in writing of the date of the commencement of the probate proceeding and the file number.

(4) The clerk shall file and index the notice of trust in the same manner as a caveat unless there exists a probate proceeding for the settlor's estate, in which case the notice of trust must be filed in the probate proceeding and the clerk shall send a copy to the personal representative.

(5) The clerk shall send a copy of any caveat filed regarding the settlor to the trustee, and the notice of trust to any caveator, unless there is a probate proceeding pending and the personal representative and the trustee are the same.

(6) Any proceeding affecting the expenses of the administration or obligations of the settlor's estate prior to the trustee filing a notice of trust are binding on the trustee.

(7) The trustee's failure to file the notice of trust does not affect the trustee's obligation to pay expenses of administration and obligations of the settlor's estate as provided in s. 733.607(2).

736.0506 Overdue distribution.—

(1) As used in this section, the term "mandatory distribution" means a distribution of income or principal the trustee is required to make to a beneficiary under the terms of the trust, including a distribution on termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(a) The discretion is expressed in the form of a standard of distribution;
or

(b) The terms of the trust authorizing a distribution couple language of discretion with language of direction.

(2) A creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary

within a reasonable time after the designated distribution date, whether or not a trust contains a spendthrift provision.

736.0507 Personal obligations of trustee.—Except to the extent of the trustee's interest in the trust other than as a trustee, trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Section 6. Part VI of chapter 736, Florida Statutes, consisting of sections 736.0601, 736.0602, 736.0603, and 736.0604, is created to read:

PART VI

REVOCABLE TRUSTS

736.0601 Capacity of settlor of revocable trust.—The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

736.0602 Revocation or amendment of revocable trust.—

(1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this code.

(2) If a revocable trust is created or funded by more than one settlor:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses.

(b) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) Subject to s. 736.0403(2), the settlor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method, by:

1. A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

2. Any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only as authorized by s. 709.08.

(6) A guardian of the property of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only as provided in s. 744.441.

(7) A trustee who does not know that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

736.0603 Settlor's powers; powers of withdrawal.—

(1) While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.

(2) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

736.0604 Limitation on action contesting validity of revocable trust.—An action to contest the validity of a trust that was revocable at the settlor's death is barred, if not commenced within the earlier of:

(1) The time as provided in chapter 95; or

(2) Six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

Section 7. Part VII of chapter 736, Florida Statutes, consisting of sections 736.0701, 736.0702, 736.0703, 736.0704, 736.0705, 736.0706, 736.0707, 736.0708, and 736.0709, is created to read:

PART VII

OFFICE OF TRUSTEE

736.0701 Accepting or declining trusteeship.—

(1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not accepted the trusteeship may decline the trusteeship. 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.

(3) A person designated as trustee may, without accepting the trusteeship:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends to a qualified beneficiary a written statement declining the trusteeship.

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

736.0702 Trustee's bond.—

(1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, the trustee's liabilities under the bond, and whether sureties are necessary. The court may modify or terminate a bond at any time.

736.0703 Cotrustees.—

(1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees or a majority of the remaining cotrustees may act for the trust.

(3) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other provision of law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another cotrustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A cotrustee may not delegate to another cotrustee the performance of a function the settlor reasonably expected the cotrustees to perform jointly. A cotrustee may revoke a delegation previously made.

(6) Except as otherwise provided in subsection (7), a cotrustee who does not join in an action of another cotrustee is not liable for the action.

(7) Each cotrustee shall exercise reasonable care to:

(a) Prevent a cotrustee from committing a breach of trust.

(b) Compel a cotrustee to redress a breach of trust.

(8) A dissenting cotrustee who joins in an action at the direction of the majority of the cotrustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action.

736.0704 Vacancy in trusteeship; appointment of successor.—

(1) A vacancy in a trusteeship occurs if:

(a) A person designated as trustee declines the trusteeship;

(b) A person designated as trustee cannot be identified or does not exist;

(c) A trustee resigns;

(d) A trustee is disqualified or removed;

(e) A trustee dies; or

(f) A trustee is adjudicated to be incapacitated.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries.

(c) By a person appointed by the court.

(4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.

(b) By a person selected by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust.

(c) By a person appointed by the court.

(5) The court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust, whether or not a vacancy in a trusteeship exists or is required to be filled.

736.0705 Resignation of trustee.—

(1) A trustee may resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) With the approval of the court.

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

(3) 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.

736.0706 Removal of trustee.—

(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on the court's own initiative.

(2) The court may remove a trustee if:

(a) The trustee has committed a serious breach of trust;

(b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c) Due to the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.

736.0707 Delivery of property by former trustee.—

(1) Unless a cotrustee remains in office or the court otherwise orders and until the trust property is delivered to a successor trustee or other person entitled to the property, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall within a reasonable time deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property, subject

to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. The provisions of this subsection are in addition to and are not in derogation of the rights of a removed or resigning trustee under the common law.

736.0708 Compensation of trustee.—

(1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified but the court may allow more or less compensation if:

(a) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

(3) If the trustee has rendered other services in connection with the administration of the trust, the trustee shall also be allowed reasonable compensation for the other services rendered in addition to reasonable compensation as trustee.

736.0709 Reimbursement of expenses.—

(1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for reasonable expenses that were properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Section 8. Part VIII of chapter 736, Florida Statutes, consisting of sections 736.0801, 736.0802, 736.0803, 736.0804, 736.0805, 736.0806, 736.0807, 736.0808, 736.0809, 736.0810, 736.08105, 736.0811, 736.0812, 736.08125, 736.0813, 736.08135, 736.0814, 736.08147, 736.0815, 736.0816, 736.08163, 736.08165, and 736.0817, is created to read:

PART VIII

DUTIES AND POWERS OF TRUSTEE

736.0801 Duty to administer trust.—Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this code.

736.0802 Duty of loyalty.—

(1) As between a trustee and the beneficiaries, a trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 736.1016, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) The transaction was authorized by the terms of the trust;
- (b) The transaction was approved by the court;
- (c) The beneficiary did not commence a judicial proceeding within the time allowed by s. 736.1008;
- (d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with s. 736.1012;
- (e) The transaction involves a contract entered into or claim acquired by the trustee when that person had not become or contemplated becoming trustee; or
- (f) The transaction was consented to in writing by a settlor of the trust while the trust was revocable.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if the sale, encumbrance, or other transaction is entered into by the trustee with:

- (a) The trustee's spouse;
- (b) The trustee's descendants, siblings, parents, or their spouses;
- (c) An officer, director, employee, agent, or attorney of the trustee; or
- (d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(5)(a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12(20), in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the disclosure requirements of this subsection.

(b) A trustee who invests trust funds in investment instruments that are owned or controlled by the trustee or its affiliate shall disclose the following to all qualified beneficiaries:

1. Notice that the trustee has invested trust funds in investment instruments owned or controlled by the trustee or its affiliate.
2. The identity of the investment instruments.
3. The identity and relationship to the trustee of any affiliate that owns or controls the investment instruments.

(c) A trustee who invests trust funds in investment instruments with respect to which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee shall disclose to all qualified beneficiaries, the nature of the services provided by the trustee or its affiliate, and all compensation, including, but not limited to, fees or commissions paid or to be paid by the account and received or to be received by an affiliate arising from such affiliated investment.

(d) Disclosure required by this subsection shall be made at least annually unless there has been no change in the method or increase in the rate at which such compensation is calculated since the most recent disclosure. The disclosure may be given in a trust disclosure document as defined in s. 736.1008, in a copy of the prospectus for the investment instrument, in any other written disclosure prepared for the investment instrument under applicable federal or state law, or in a written summary that includes all compensation received or to be received by the trustee and any affiliate of the trustee and an explanation of the manner in which such compensation is calculated, either as a percentage of the assets invested or by some other method.

(e) This subsection shall apply as follows:

1. This subsection does not apply to qualified investment instruments or to a trust for which a right of revocation exists.

2. For investment instruments other than qualified investment instruments, paragraphs (a), (b), (c), and (d) shall apply to irrevocable trusts created on or after July 1, 2007, which expressly authorize the trustee, by specific reference to this subsection, to invest in investment instruments owned or controlled by the trustee or its affiliate.

3. For investment instruments other than qualified investment instruments, paragraphs (a), (b), (c), and (d) shall apply to irrevocable trusts not described in subparagraph 2. only as follows:

a. Such paragraphs shall not apply until 60 days after the statement required in paragraph (f) is provided and no objection is made or any objection which is made has been terminated.

(I) An objection is made if, within 60 days after the date of the statement required in paragraph (f), a super majority of the eligible beneficiaries deliver to the trustee written objections to the application of this subsection

to such trust. An objection shall be deemed to be delivered to the trustee on the date the objection is mailed to the mailing address listed in the notice provided in paragraph (f).

(II) An objection is terminated upon the earlier of the receipt of consent from a super majority of eligible beneficiaries of the class that made the objection or the resolution of the objection pursuant to this subparagraph.

(III) If an objection is delivered to the trustee, the trustee may petition the court for an order overruling the objection and authorizing the trustee to make investments under this subsection. The burden shall be on the trustee to show good cause for the relief sought.

(IV) Any qualified beneficiary may petition the court for an order to prohibit, limit, or restrict a trustee's authority to make investments under this subsection. The burden shall be upon the petitioning beneficiary to show good cause for the relief sought.

(V) The court may award costs and attorney's fees relating to any petition under this subparagraph in the same manner as in chancery actions. When costs and attorney's fees are to be paid out of the trust, the court, in its discretion, may direct from which part of the trust such costs and fees shall be paid.

b. The objection of a super majority of eligible beneficiaries under this subparagraph may thereafter be removed by the written consent of a super majority of the class or classes of those eligible beneficiaries that made the objection.

(f)1. Any time prior to initially investing in any investment instrument described in this subsection other than a qualified investment instrument, the trustee of a trust described in subparagraph (e)3. shall provide to all qualified beneficiaries a statement containing the following:

a. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information.

b. A statement that, unless a super majority of the eligible beneficiaries objects to the application of this subsection to the trust within 60 days after the date the statement pursuant to this subsection was delivered, this subsection shall apply to the trust.

c. A statement that, if this subsection applies to the trust, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. “Eligible beneficiaries” means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (c); or

(II) If there is no beneficiary described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (b).

b. “Super majority of the eligible beneficiaries” means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(14)(c), at least two-thirds in interest of the beneficiaries described in s. 736.0103(14)(a) or two-thirds in interest of the beneficiaries described in s. 736.0103(14)(c), if the interests of the beneficiaries are reasonably ascertainable; otherwise, two-thirds in number of either such class; or

(II) If there is no beneficiary as described in s. 736.0103(14)(c), at least two-thirds in interest of the beneficiaries described in s. 736.0103(14)(a) or two-thirds in interest of the beneficiaries described in s. 736.0103(14)(b), if the interests of the beneficiaries are reasonably ascertainable; otherwise, two-thirds in number of either such class.

c. “Qualified investment instrument” means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

d. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

(g) Nothing in this chapter is intended to create or imply a duty for the trustee to seek the application of this subsection to invest in investment instruments described in paragraph (a), and no inference of impropriety may be made as a result of a trustee electing not to invest trust assets in investment instruments described in paragraph (a).

(6) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(7) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) A payment of reasonable compensation to the trustee;

(c) A transaction between a trust and another trust, the decedent's estate, or a guardian of the property of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) An advance by the trustee of money for the protection of the trust.

(8) This section does not preclude the employment of persons, including, but not limited to, attorneys, accountants, investment advisers, or agents, even if they are the trustee, an affiliate of the trustee, or otherwise associated with the trustee, to advise or assist the trustee in the exercise of any of the trustee's powers and to pay reasonable compensation and costs incurred in connection with such employment from the assets of the trust; to act without independent investigation on their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(9) The court may appoint a special fiduciary to act with respect to any proposed transaction that might violate this section if entered into by the trustee.

(10) Payment of costs or attorney's fees incurred in any trust proceeding from the assets of the trust may be made by the trustee without the approval of any person and without court authorization, except that court authorization shall be required if 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.

736.0803 Impartiality.—If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust property, giving due regard to the beneficiaries' respective interests.

736.0804 Prudent administration.—A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

736.0805 Expenses of administration.—In administering a trust, the trustee shall only incur expenses that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

736.0806 Trustee's skills.—A trustee who has special skills or expertise, or is named trustee in reliance on the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

736.0807 Delegation by trustee.—

(1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) Selecting an agent.

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.

(c) Reviewing the agent's actions periodically, in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

736.0808 Powers to direct.—

(1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a direction of the settlor that is contrary to the terms of the trust while a trust is revocable.

(2) If the terms of a trust confer on a person other than the settlor of a revocable trust, the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(3) The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.

(4) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

736.0809 Control and protection of trust property.—A trustee shall take reasonable steps to take control of and protect the trust property.

736.0810 Recordkeeping and identification of trust property.—

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

736.08105 Duty to ascertain marketable title of trust real property.—A trustee holding title to real property received from a settlor or estate shall not be required to obtain title insurance or proof of marketable title until a marketable title is required for a sale or conveyance of the real property.

736.0811 Enforcement and defense of claims.—A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

736.0812 Collecting trust property.—A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and, except as provided in s. 736.08125, to redress a breach of trust known to the trustee to have been committed by a former trustee.

736.08125 Protection of successor trustees.—

(1) A successor trustee is not personally liable for actions taken by any prior trustee, nor does any successor trustee have a duty to institute any proceeding against any prior trustee, or file any claim against any prior trustee's estate, for any of the prior trustee's actions as trustee under any of the following circumstances:

(a) As to a successor trustee who succeeds a trustee who was also the settlor of a trust that was revocable during the time that the settlor served as trustee;

(b) As to any beneficiary who has waived any accounting required by s. 736.0813, but only as to the periods included in the waiver;

(c) As to any beneficiary who has released the successor trustee from the duty to institute any proceeding or file any claim;

(d) As to any person who is not an eligible beneficiary; or

(e) As to any eligible beneficiary:

1. If a supermajority of the eligible beneficiaries have released the successor trustee;

2. If the eligible beneficiary has not delivered a written request to the successor trustee to institute an action or file a claim against the prior trustee within 6 months after the date of the successor trustee's acceptance of the trust, if the successor trustee has notified the eligible beneficiary in writing of acceptance by the successor trustee in accordance with 736.0813(1)(a) and that writing advises the beneficiary that, unless the

beneficiary delivers the written request within 6 months after the date of acceptance, the right to proceed against the successor trustee will be barred pursuant to this section; or

3. For any action or claim that the eligible beneficiary is barred from bringing against the prior trustee.

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

(a) “Eligible beneficiaries” means:

1. At the time the determination is made, if there are one or more beneficiaries as described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (c); or

2. If there is no beneficiary as described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (b).

(b) “Supermajority of eligible beneficiaries” means at least two-thirds in interest of the eligible beneficiaries if the interests of the eligible beneficiaries are reasonably ascertainable, otherwise, at least two-thirds in number of the eligible beneficiaries.

(3) Nothing in this section 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.

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee’s duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust’s existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

(2) A qualified beneficiary may waive the trustee's duty to account under paragraph (1)(d). A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

(3) The representation provisions of part III apply with respect to all rights of a qualified beneficiary under this section.

(4) As provided in s. 736.0603(1), the trustee's duties under this section extend only to the settlor while a trust is revocable.

(5) This section applies to trust accountings rendered for accounting periods beginning on or after January 1, 2008.

736.08135 Trust accountings.—

(1) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).

(2)(a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.

(c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.

(e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.

(f) The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

(3) This section applies to all trust accountings rendered for any accounting periods beginning on or after January 1, 2003.

736.0814 Discretionary powers; tax savings.—

(1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. A court shall not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(2) Subject to subsection (3) and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, a person who is a beneficiary and a trustee may not:

(a) Make discretionary distributions of either principal or income to or for the benefit of that trustee, except to provide for that trustee’s health, education, maintenance, or support as described under ss. 2041 and 2514 of the Internal Revenue Code;

(b) Make discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of the trustee’s fiduciary duties;

(c) Make discretionary distributions of either principal or income to satisfy any of the trustee’s legal support obligations; or

(d) Exercise any other power, including, but not limited to, the right to remove or to replace any trustee, so as to cause the powers enumerated in paragraph (a), paragraph (b), or paragraph (c) to be exercised on behalf of, or for the benefit of, a beneficiary who is also a trustee.

(3) Subsection (2) does not apply to:

(a) A power held by the settlor of the trust;

(b) A power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in s. 2056(a) or s. 2523(a) of the Internal Revenue Code of 1986, as amended, was previously allowed;

(c) Any trust during any period that the trust may be revoked or amended by its settlor; or

(d) A trust if contributions to the trust qualify for the annual exclusion under s. 2503(c) of the Internal Revenue Code of 1986, as amended.

(4) A power whose exercise is limited or prohibited by subsection (2) may be exercised by the remaining trustees whose exercise of the power is not so limited or prohibited. If there is no trustee qualified to exercise the power, on petition by any qualified beneficiary, the court may appoint an independent trustee with authority to exercise the power.

(5) A person who has the right to remove or to replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers of the trustee that is subject to removal or to replacement.

736.08147 Duty to distribute trust income.—If a will or trust instrument granting income to the settlor's or testator's spouse for life is silent as to the time of distribution of income and the frequency of distributions, the trustee shall distribute all net income, as defined in chapter 738, to the spouse no less frequently than annually. This provision shall apply to any trust established before, on, or after July 1, 2007, unless the trust instrument expressly directs or permits net income to be distributed less frequently than annually.

736.0815 General powers of trustee.—

(1) A trustee, without authorization by the court, may, except as limited or restricted by this code, exercise:

(a) Powers conferred by the terms of the trust.

(b) Except as limited by the terms of the trust:

1. All powers over the trust property that an unmarried competent owner has over individually owned property.

2. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.

3. Any other powers conferred by this code.

(2) The exercise of a power is subject to the fiduciary duties prescribed by this code.

736.0816 Specific powers of trustee.—Except as limited or restricted by this code, a trustee may:

(1) Collect trust property and accept or reject additions to the trust property from a settlor, including an asset in which the trustee is personally interested, and hold property in the name of a nominee or in other form without disclosure of the trust so that title to the property may pass by delivery but the trustee is liable for any act of the nominee in connection with the property so held.

(2) Acquire or sell property, for cash or on credit, at public or private sale.

(3) Acquire an undivided interest in a trust asset, including, but not limited to, a money market mutual fund, mutual fund, or common trust fund, in which asset the trustee holds an undivided interest in any trust capacity, including any money market or other mutual fund from which the trustee or any affiliate or associate of the trustee is entitled to receive reasonable compensation for providing necessary services as an investment adviser, portfolio manager, or servicing agent. A trustee or affiliate or associate of the trustee may receive compensation for such services in addition to fees received for administering the trust provided such compensation is fully disclosed in writing to all qualified beneficiaries.

(4) Exchange, partition, or otherwise change the character of trust property.

(5) Deposit trust money in an account in a regulated financial-service institution.

(6) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust and advance money for the protection of the trust.

(7) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including, but not limited to, merging, dissolving, or otherwise changing the form of business organization or contributing additional capital.

(8) With respect to stocks or other securities, exercise the rights of an absolute owner, including, but not limited to, the right to:

(a) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement.

(b) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery.

(c) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights.

(d) Deposit the securities with a depository or other regulated financial-service institution.

(9) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.

(10) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural re-

sources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust.

(11) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired.

(12) Insure the property of the trust against damage or loss and insure the trustee, trustee's agents, and beneficiaries against liability arising from the administration of the trust.

(13) Abandon or decline to administer property of no value or of insufficient value to justify the collection or continued administration of such property.

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust.

(16) Allocate items of income or expense to trust income or principal, as provided by law.

(17) Exercise elections with respect to federal, state, and local taxes.

(18) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under such plan, annuity, or insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(19) Make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions that are fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans.

(20) Employ persons, including, but not limited to, attorneys, accountants, investment advisers, or agents, even if they are the trustee, an affiliate of the trustee, or otherwise associated with the trustee, to advise or assist the trustee in the exercise of any of the trustee's powers and pay reasonable compensation and costs incurred in connection with such employment from the assets of the trust and act without independent investigation on the recommendations of such persons.

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying the amount directly to the beneficiary or applying the amount for the beneficiary's benefit, or by:

(a) Paying the amount to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(b) Paying the amount to the beneficiary's custodian under a Uniform Transfers to Minors Act or custodial trustee under a Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(c) Paying the amount to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf, if the trustee does not know of a guardian of the property, guardian of the person, custodian, or custodial trustee; or

(d) Managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.

(23) Prosecute or defend, including appeals, an action, claim, or judicial proceeding in any jurisdiction to protect trust property or the trustee in the performance of the trustee's duties.

(24) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.

(25) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to the property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

736.08163 Powers of trustees relating to environmental or human health laws or to trust property contaminated with hazardous or toxic substances; liability.—

(1) From the creation of a trust until final distribution of the assets from the trust, the trustee has, without court authorization, the powers specified in subsection (2).

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

(a) Inspect or investigate, or cause to be inspected or investigated, property held by the trustee, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business entity for the purpose of determining compliance with an environmental law affecting that property or to respond to an actual or threatened violation of an environmental law affecting that property;

(b) Take, on behalf of the trust, any action necessary to prevent, abate, or otherwise remedy an actual or potential violation of an environmental law affecting property held by the trustee, before or after initiation of an enforcement action by a governmental body;

(c) Refuse to accept property in trust if the trustee determines that any property to be donated or conveyed to the trustee is contaminated with a

hazardous substance or is being used or has been used for an activity directly or indirectly involving a hazardous substance, which circumstance could result in liability to the trust or trustee or otherwise impair the value of the assets to be held;

(d) Settle or compromise at any time any claim against the trust or trustee that may be asserted by a governmental body or private party that involves the alleged violation of an environmental law affecting property of any trust over which the trustee has responsibility;

(e) Disclaim any power granted by any document, law, or rule of law that, in the sole judgment of the trustee, may cause the trustee to incur personal liability, or the trust to incur liability, under any environmental law;

(f) Decline to serve as a trustee, or having undertaken to serve as a trustee, resign at any time, if the trustee believes there is or may be a conflict of interest in its fiduciary capacity and in its individual capacity because of potential claims or liabilities that may be asserted against the trustee on behalf of the trust by reason of the type or condition of the assets held; or

(g) Charge against the income and principal of the trust the cost of any inspection, investigation, review, abatement, response, cleanup, or remedial action that this section authorizes the trustee to take and, if the trust terminates or closes or the trust property is transferred to another trustee, hold assets sufficient to cover the cost of cleaning up any known environmental problem.

(3) A trustee is not personally liable to any beneficiary or any other person for a decrease in value of assets in a trust by reason of the trustee's compliance or efforts to comply with an environmental law, specifically including any reporting requirement under that law.

(4) A trustee that acquires ownership or control of a vessel or other property, without having owned, operated, or materially participated in the management of that vessel or property before assuming ownership or control as trustee, is not considered an owner or operator for purposes of liability under chapter 376, chapter 403, or any other environmental law. A trustee that willfully, knowingly, or recklessly causes or exacerbates a release or threatened release of a hazardous substance is personally liable for the cost of the response, to the extent that the release or threatened release is attributable to the trustee's activities. This subsection does not preclude the filing of claims against the assets that constitute the trust held by the trustee or the filing of actions against the trustee in its representative capacity and in any such action, an award or judgment against the trustee must be satisfied only from the assets of the trust.

(5) The acceptance by the trustee of the property or a failure by the trustee to inspect or investigate the property does not create any inference as to whether there is liability under an environmental law with respect to that property.

(6) For the purposes of this section, the term “hazardous substance” means a substance defined as hazardous or toxic, or any contaminant, pollutant, or constituent thereof, or otherwise regulated, by an environmental law.

(7) This section does not apply to any trust created under a document executed before July 1, 1995, unless the trust is amendable and the settlor amends the trust at any time to incorporate the provisions of this section.

736.08165 Administration pending outcome of contest or other proceeding.—

(1) Pending the outcome of a proceeding filed to determine the validity of all or part of a trust or the beneficiaries of all or part of a trust, the trustee shall proceed with the administration of the trust as if no proceeding had been commenced, except no action may be taken and no distribution may be made to a beneficiary in contravention of the rights of those persons who may be affected by the outcome of the proceeding.

(2) Upon motion of a party and after notice to interested persons, a court, on good cause shown, may make an exception to the prohibition under subsection (1) and authorize the trustee to act or to distribute trust assets to a beneficiary subject to any conditions the court, in the court’s discretion, may impose, including the posting of bond by the beneficiary.

736.0817 Distribution on termination.—Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. The provisions of this section are in addition to and are not in derogation of the rights of a trustee under the common law with respect to final distribution of a trust.

Section 9. Part IX of chapter 736, Florida Statutes, consisting of section 736.0901, is created to read:

PART IX

TRUST INVESTMENTS

736.0901 Applicability of chapter 518.—A trustee shall invest trust property in accordance with chapter 518.

Section 10. Part X of chapter 736, Florida Statutes, consisting of sections 736.1001, 736.1002, 736.1003, 736.1004, 736.1005, 736.1006, 736.1007, 736.1008, 736.1009, 736.1010, 736.1011, 736.1012, 736.1013, 736.1014, 736.1015, 736.1016, 736.1017, and 736.1018, is created to read:

PART X

LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

736.1001 Remedies for breach of trust.—

(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may:

(a) Compel the trustee to perform the trustee's duties;

(b) Enjoin the trustee from committing a breach of trust;

(c) Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;

(d) Order a trustee to account;

(e) Appoint a special fiduciary to take possession of the trust property and administer the trust;

(f) Suspend the trustee;

(g) Remove the trustee as provided in s. 736.706;

(h) Reduce or deny compensation to the trustee;

(i) Subject to s. 736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(j) Order any other appropriate relief.

(3) As an illustration of the remedies available to the court and without limiting the court's discretion as provided in subsection (2), if a breach of trust results in the favoring of any beneficiary to the detriment of any other beneficiary or consists of an abuse of the trustee's discretion:

(a) To the extent the breach of trust has resulted in no distribution to a beneficiary or a distribution that is too small, the court may require the trustee to pay from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(b) To the extent the breach of trust has resulted in a distribution to a beneficiary that is too large, the court may restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or by requiring that beneficiary to return some or all of the distribution to the trust.

736.1002 Damages for breach of trust.—

(1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been if the breach had not

occurred, including lost income, capital gain, or appreciation that would have resulted from proper administration; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one person, including a trustee or trustees, is liable to the beneficiaries for a breach of trust, each liable person is entitled to pro rata contribution from the other person or persons. A person is not entitled to contribution if the person committed the breach of trust in bad faith. A person who received a benefit from the breach of trust is not entitled to contribution from another person to the extent of the benefit received.

(3) In determining the pro rata shares of liable persons in the entire liability for a breach of trust:

(a) Their relative degrees of fault shall be the basis for allocation of liability.

(b) If equity requires, the collective liability of some as a group shall constitute a single share.

(c) Principles of equity applicable to contribution generally shall apply.

(4) The right of contribution shall be enforced as follows:

(a) Contribution may be enforced by separate action, whether or not judgment has been entered in an action against two or more liable persons for the same breach of trust.

(b) When a judgment has been entered in an action against two or more liable persons for the same breach of trust, contribution may be enforced in that action by judgment in favor of one judgment defendant against any other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for breach of trust against the liable person seeking contribution, any separate action by that person to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the breach of trust against the liable person seeking contribution, the person's right of contribution is barred unless the person has:

1. Discharged by payment the common liability within the period of the statute of limitations applicable to the beneficiary's right of action against the liable person and the person has commenced an action for contribution within 1 year after payment, or

2. Agreed, while action is pending against the liable person, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced the person's action for contribution.

(5) The beneficiary's recovery of a judgment for breach of trust against one liable person does not of itself discharge other liable persons from liabil-

ity for the breach of trust unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(6) The judgment of the court in determining the liability of several defendants to the beneficiary for breach of trust is binding upon such defendants in determining the right of such defendants to contribution.

(7) Subsection (2) applies to all causes of action for breach of trust pending on July 1, 2007, under which causes of action the right of contribution among persons jointly and severally liable is involved and to all causes of action filed after July 1, 2007.

736.1003 Damages in absence of breach.—Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

736.1004 Attorney's fees and costs.—

(1)(a) In all actions for breach of fiduciary duty or challenging the exercise of, or failure to exercise, a trustee's powers; and

(b) In proceedings arising under ss. 736.0410-736.0417,

the court shall award taxable costs as in chancery actions, including attorney fees and guardian ad litem fees.

(2) When awarding taxable costs under this section, including attorney fees and guardian ad litem fees, the court, in its discretion, may direct payment from a party's interest, if any, in the trust or enter a judgment that may be satisfied from other property of the party, or both.

736.1005 Attorney's fees for services to the trust.—

(1) Any attorney who has rendered services to a trust may be awarded reasonable compensation from the trust. The attorney may apply to the court for an order awarding attorney's fees and, after notice and service on the trustee and all beneficiaries entitled to an accounting under s. 736.0813, the court shall enter an order on the fee application.

(2) Whenever attorney's fees are to be paid out of the trust, the court, in its discretion, may direct from what part of the trust the fees shall be paid.

(3) Except when a trustee's interest may be adverse in a particular matter, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's entitlement to fees pursuant to this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the trustee, if the actual notice date is later than a date of reasonable notice. In exercising this discretion, the court may exclude compensation for services rendered after the reasonable notice date but prior to the date of actual notice.

736.1006 Costs in trust proceedings.—

(1) In all trust proceedings, costs may be awarded as in chancery actions.

(2) Whenever costs are to be paid out of the trust, the court, in its discretion, may direct from what part of the trust the costs shall be paid.

736.1007 Trustee's attorney's fees.—

(1) If the trustee of a revocable trust retains an attorney to render legal services in connection with the initial administration of the trust, the attorney is entitled to reasonable compensation for those legal services, payable from the assets of the trust without court order. The trustee and the attorney may agree to compensation that is determined in a manner or amount other than the manner or amount provided in this section. The agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be bound by the agreement. The agreement may provide that the trustee is not individually liable for the attorney's fees and costs.

(2) Unless otherwise agreed, compensation based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable total compensation for ordinary services of all attorneys employed generally to advise a trustee concerning the trustee's duties in initial trust administration.

(3) An attorney who is retained to render only limited and specifically defined legal services shall be compensated as provided in the retaining agreement. If the amount or method of determining compensation is not provided in the agreement, the attorney is entitled to a reasonable fee, taking into account the factors set forth in subsection (6).

(4) Ordinary services of the attorney in an initial trust administration include legal advice and representation concerning the trustee's duties relating to:

(a) Review of the trust instrument and each amendment for legal sufficiency and interpretation.

(b) Implementation of substitution of the successor trustee.

(c) Persons who must or should be served with required notices and the method and timing of such service.

(d) The obligation of a successor to require a former trustee to provide an accounting.

(e) The trustee's duty to protect, insure, and manage trust assets and the trustee's liability relating to these duties.

(f) The trustee's duty regarding investments imposed by the prudent investor rule.

(g) The trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and trustee to the settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors.

(h) Contributions due to the personal representative of the settlor's estate for payment of expenses of administration and obligations of the settlor's estate.

(i) Identifying tax returns required to be filed by the trustee, the trustee's liability for payment of taxes, and the due date of returns.

(j) Filing a nontaxable affidavit, if not filed by a personal representative.

(k) Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions.

(l) Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument.

(m) Preparation of any legal documents required to effect distribution.

(n) Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries.

(o) If there is a conflict of interest between a trustee who is a beneficiary and other beneficiaries of the trust, advice to the trustee on limitations of certain authority of the trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent trustee and appropriate procedures.

(p) Procedures for the trustee's discharge from liability for administration of the trust on termination or resignation.

(5) In addition to the attorney's fees for ordinary services, the attorney for the trustee shall be allowed further reasonable compensation for any extraordinary service. What constitutes an extraordinary service may vary depending on many factors, including the size of the trust. Extraordinary services may include, but are not limited to:

(a) Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust.

(b) Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes.

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback

rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release from personal liability for payment of tax.

(d) Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee.

(e) Preparation of decedent's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.

(f) Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters.

(g) Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee.

(h) Legal advice regarding claims for damage to the environment or related procedures.

(i) Legal advice regarding homestead status of trust real property or proceedings involving the status.

(j) Involvement in fiduciary, employee, or attorney compensation disputes.

(k) Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.

(6) Upon petition of any interested person in a proceeding to review the compensation paid or to be paid to the attorney for the trustee, the court may increase or decrease the compensation for ordinary services of the attorney for the trustee or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors giving such weight to each as the court may determine to be appropriate:

(a) The promptness, efficiency, and skill with which the initial administration was handled by the attorney.

(b) The responsibilities assumed by, and potential liabilities of, the attorney.

(c) The nature and value of the assets that are affected by the decedent's death.

(d) The benefits or detriments resulting to the trust or the trust's beneficiaries from the attorney's services.

(e) The complexity or simplicity of the administration and the novelty of issues presented.

(f) The attorney's participation in tax planning for the estate, the trust, and the trust's beneficiaries and tax return preparation or review and approval.

(g) The nature of the trust assets, the expenses of administration, and the claims payable by the trust and the compensation paid to other professionals and fiduciaries.

(h) Any delay in payment of the compensation after the services were furnished.

(i) Any other relevant factors.

(7) The court may determine reasonable attorney's compensation without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, an expert witness fee may be awarded by the court and paid from the assets of the trust. The court shall direct from what part of the trust the fee is to be paid.

(8) If a separate written agreement regarding compensation exists between the attorney and the settlor, the attorney shall furnish a copy to the trustee prior to commencement of employment and, if employed, shall promptly file and serve a copy on all interested persons. A separate agreement or a provision in the trust suggesting or directing the trustee to retain a specific attorney does not obligate the trustee to employ the attorney or obligate the attorney to accept the representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid shall not exceed the compensation provided in the agreement.

(9) Court proceedings to determine compensation, if required, are a part of the trust administration process and the costs, including fees for the trustee's attorney, shall be determined by the court and paid from the assets of the trust unless the court finds the attorney's fees request to be substantially unreasonable. The court shall direct from what part of the trust the fees are to be paid.

(10) As used in this section, the term "initial trust administration" means administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.

736.1008 Limitations on proceedings against trustees.—

(1) Except as provided in subsection (2), all claims by a beneficiary against a trustee for breach of trust are barred as provided in chapter 95 as to:

(a) All matters adequately disclosed in a trust disclosure document issued by the trustee, with the limitations period beginning on the date of receipt of adequate disclosure.

(b) All matters not adequately disclosed in a trust disclosure document if the trustee has issued a final trust accounting and has given written notice to the beneficiary of the availability of the trust records for examination and that any claims with respect to matters not adequately disclosed may be barred unless an action is commenced within the applicable limitations period provided in chapter 95. The limitations period begins on the date of receipt of the final trust accounting and notice.

(2) Unless sooner barred by adjudication, consent, or limitations, a beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt from the trustee of the trust disclosure document or a limitation notice that applies to that disclosure document, whichever is received later.

(3) When a trustee has not issued a final trust accounting or has not given written notice to the beneficiary of the availability of the trust records for examination and that claims with respect to matters not adequately disclosed may be barred, a claim against the trustee for breach of trust based on a matter not adequately disclosed in a trust disclosure document accrues when the beneficiary has actual knowledge of the trustee's repudiation of the trust or adverse possession of trust assets, and is barred as provided in chapter 95.

(4) As used in this section, the term:

(a) "Trust disclosure document" means a trust accounting or any other written report of the trustee. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter.

(b) "Trust accounting" means an accounting that adequately discloses the information required by and that substantially complies with the standards set forth in s. 736.08135.

(c) "Limitation notice" means a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later. A limitation notice may but is not required to be in the following form: "An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney."

(5) For purposes of this section, a limitation notice applies to a trust disclosure document when the limitation notice is:

(a) Contained as a part of the trust disclosure document or as a part of another trust disclosure document received within 1 year prior to the receipt of the latter trust disclosure document;

(b) Accompanied concurrently by the trust disclosure document or by another trust disclosure document that was received within 1 year prior to the receipt of the latter trust disclosure document;

(c) Delivered separately within 10 days after the delivery of the trust disclosure document or of another trust disclosure document that was received within 1 year prior to the receipt of the latter trust disclosure document. For purposes of this paragraph, a limitation notice is not delivered separately if the notice is accompanied by another written communication, other than a written communication that refers only to the limitation notice;
or

(d) Received more than 10 days after the delivery of the trust disclosure document but only if the limitation notice references that trust disclosure document and:

1. Offers to provide to the beneficiary on request another copy of that trust disclosure document if the document was received by the beneficiary within 1 year prior to receipt of the limitation notice; or

2. Is accompanied by another copy of that trust disclosure document if the trust disclosure document was received by the beneficiary 1 year or more prior to the receipt of the limitation notice.

(6) This section applies to trust accountings for accounting periods beginning on or after January 1, 2008, and to written reports, other than trust accountings, received by a beneficiary on or after January 1, 2008.

736.1009 Reliance on trust instrument.—A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

736.1010 Event affecting administration or distribution.—If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

736.1011 Exculpation of trustee.—

(1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term:

(a) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(b) Was inserted into the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship with the settlor.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that the term's existence and contents were adequately communicated directly to the settlor.

736.1012 Beneficiary's consent, release, or ratification.—A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

736.1013 Limitation on personal liability of trustee.—

(1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(2) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(4) Issues of liability between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or in any other appropriate proceeding.

736.1014 Limitations on actions against certain trusts.—

(1) After the death of a settlor, no creditor of the settlor may bring, maintain, or continue any direct action against a trust described in s. 733.707(3), the trustee of the trust, or any beneficiary of the trust that is dependent on the individual liability of the settlor. Such claims and causes of action against the settlor shall be presented and enforced against the settlor's estate as provided in part VII of chapter 733 and the personal representative of the settlor's estate may obtain payment from the trustee of a trust described in s. 733.707(3) as provided in ss. 733.607(2), 733.707(3), and 736.05053.

(2) This section does not preclude a direct action against a trust described in s. 733.707(3), the trustee of the trust, or a beneficiary of the trust that is not dependent on the individual liability of the settlor.

(3) This section does not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

736.1015 Interest as general partner.—

(1) Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to a Uniform Partnership Act or Uniform Limited Partnership Act.

(2) A trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

736.1016 Protection of person dealing with trustee.—

(1) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

736.1017 Certification of trust.—

(1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

- (a) The trust exists and the date the trust instrument was executed.
 - (b) The identity of the settlor.
 - (c) The identity and address of the currently acting trustee.
 - (d) The powers of the trustee.
 - (e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
 - (f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.
 - (g) The manner of taking title to trust property.
- (2) A certification of trust may be signed or otherwise authenticated by any trustee.
- (3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- (4) A certification of trust need not contain the dispositive terms of a trust.
- (5) A recipient of a certification of trust may require the trustee to furnish copies of any excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.
- (6) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.
- (7) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.
- (8) This section does not limit the right of a person to obtain a copy of the trust instrument when required to be furnished by law or in a judicial proceeding concerning the trust.

736.1018 Improper distribution or payment; liability of distributee.— Any person who received a distribution or was paid improperly from a trust shall return the assets or funds received and the income from those assets or interest on the funds from the date of distribution or payment unless the distribution or payment cannot be questioned because of adjudication, estoppel, or limitations. If the person does not have the assets or funds, the value of the assets or funds at the date of disposition, income from the assets or

funds, and gain received by the person from the assets or funds shall be returned.

Section 11. Part XI of chapter 736, Florida Statutes, consisting of sections 736.1101, 736.1102, 736.1103, 736.1104, 736.1105, 736.1106, 736.1107, and 736.1108, is created to read:

PART XI

RULES OF CONSTRUCTION

736.1101 Rules of construction; general provisions.—Except as provided in s. 736.0105(2):

(1) The intent of the settlor as expressed in the terms of the trust controls the legal effect of the dispositions made in the trust.

(2) The rules of construction as expressed in this part shall apply unless a contrary intent is indicated by the terms of the trust.

736.1102 Construction of generic terms.—Adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship, in accordance with rules for determining relationships for purposes of intestate succession.

736.1103 Gifts to multi-generation classes to be per stirpes.—Class gifts to descendants, issue, and other multi-generation classes shall be per stirpes.

736.1104 Killer not entitled to receive property or other benefits by reason of victim's death.—

(1) A beneficiary of a trust who unlawfully and intentionally kills or unlawfully and intentionally participates in procuring the death of the settlor or another person on whose death such beneficiary's interest depends, is not entitled to any trust interest, including homestead, dependent on the victim's death and such interest shall devolve as though the killer had predeceased the victim.

(2) A final judgment of conviction of murder in any degree is conclusive for the purposes of this section. In the absence of a murder conviction in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section.

736.1105 Dissolution of marriage; effect on revocable trust.—Unless the trust instrument or the judgment for dissolution of marriage or divorce expressly provides otherwise, if a revocable trust is executed by a husband or wife as settlor prior to annulment of the marriage or entry of a judgment for dissolution of marriage or divorce of the settlor from the settlor's spouse, any provision of the trust that affects the settlor's spouse will become void upon annulment of the marriage or entry of the judgment of dissolution of marriage or divorce and any such trust shall be administered and construed as if the settlor's spouse had died on the date of the annulment or on entry of the judgment for dissolution of marriage or divorce.

736.1106 Antilapse; survivorship with respect to future interests under terms of inter vivos and testamentary trusts; substitute takers.—

(1) As used in this section, the term:

(a) “Beneficiary” means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(b) “Distribution date,” with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(c) “Future interest” includes an alternative future interest and a future interest in the form of a class gift.

(d) “Future interest under the terms of a trust” means a future interest created by an inter vivos or testamentary transfer to an existing trust or creating a trust or by an exercise of a power of appointment to an existing trust directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(e) “Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who did not predecease the distribution date or is not deemed to have predeceased the distribution date by operation of law.

(2) A future interest under the terms of a trust is contingent upon the beneficiary surviving the distribution date. Unless a contrary intent appears in the trust instrument, if a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary’s surviving descendants. They take per stirpes the property to which the beneficiary would have been entitled if the beneficiary had survived the distribution date.

(3) In the application of this section:

(a) Words of survivorship attached to a future interest are a sufficient indication of an intent contrary to the application of this section.

(b) A residuary clause in a will is not a sufficient indication of an intent contrary to the application of this section, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(4) If, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) If the future interest was created by the exercise of a power of appointment, the property passes under the donor’s gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust.

(b) If no taker is produced by the application of paragraph (a) and the trust was created in a nonresiduary devise or appointment in the transfer-

or's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(c) If no taker is produced by the application of paragraph (a) or paragraph (b), the property passes to those persons, including the state, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile if the transferor died when the disposition is to take effect in possession or enjoyment.

For purposes of paragraphs (b) and (c), the term "transferor" with respect to a future interest created by the exercise of a power of appointment, means the donor if the power was a nongeneral power and the donee if the power was a general power.

(5) This section applies to all trusts other than trusts that were irrevocable before the effective date of this code.

736.1107 Change in securities; accessions; nonademption.—A gift of specific securities, rather than their equivalent value, entitles the beneficiary only to:

(1) As much of the gifted securities of the same issuer held by the trust estate at the time of the occurrence of the event entitling the beneficiary to distribution.

(2) Any additional or other securities of the same issuer held by the trust estate because of action initiated by the issuer, excluding any acquired by exercise of purchase options.

(3) Securities of another issuer held by the trust estate as a result of a merger, consolidation, reorganization, or other similar action initiated by the original issuer.

736.1108 Penalty clause for contest.—

(1) A provision in a trust instrument purporting to penalize any interested person for contesting the trust instrument or instituting other proceedings relating to a trust estate or trust assets is unenforceable.

(2) This section applies to trusts created on or after October 1, 1993. For purposes of this subsection, a revocable trust shall be treated as created when the right of revocation terminates.

Section 12. Part XII of chapter 736, Florida Statutes, consisting of sections 736.1201, 736.1202, 736.1203, 736.1204, 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, and 736.1210, is created to read:

PART XII

CHARITABLE TRUSTS

736.1201 Definitions.—As used in this part:

(1) “Charitable organization” means an organization described in s. 501(c)(3) of the Internal Revenue Code and exempt from tax under s. 501(a) of the Internal Revenue Code.

(2) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

(3) “Private foundation trust” means a trust, including a trust described in s. 4947(a)(1) of the Internal Revenue Code, as defined in s. 509(a) of the Internal Revenue Code.

(4) “Split interest trust” means a trust for individual and charitable beneficiaries that is subject to the provisions of s. 4947(a)(2) of the Internal Revenue Code.

(5) “State attorney” means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.

736.1202 Application of this part.—Except as otherwise provided in the trust, the provisions of this part apply to all private foundation trusts and split interest trusts, whether created or established before or after November 1, 1971, and to all trust assets acquired by the trustee before or after November 1, 1971.

736.1203 Trustee of a private foundation trust or a split interest trust.—Except as provided in s. 736.1205, the trustee of a private foundation trust or a split interest trust has the duties and powers conferred on the trustee by this part.

736.1204 Powers and duties of trustee of a private foundation trust or a split interest trust.—

(1) In the exercise of a trustee’s powers, including the powers granted by this part, a trustee has a duty to act with due regard to the trustee’s obligation as a fiduciary, including a duty not to exercise any power in such a way as to:

(a) Deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes;

(b) Deprive a donor of a trust asset or tax deduction or credit; or

(c) Operate to impose a tax on a donor, trust, or other person.

For purposes of this subsection, the term “tax” includes, but is not limited to, any federal, state, or local excise, income, gift, estate, or inheritance tax.

(2) Except as provided in s. 736.1205, a trustee of a private foundation trust shall make distributions at such time and in such manner as not to subject the trust to tax under s. 4942 of the Internal Revenue Code.

(3) Except as provided in subsection (4) and in s. 736.1205, a trustee of a private foundation trust, or a split interest trust to the extent that the split

interest trust is subject to the provisions of s. 4947(a)(2) of the Internal Revenue Code, in the exercise of the trustee's powers shall not:

(a) Engage in any act of self-dealing as defined in s. 4941(d) of the Internal Revenue Code;

(b) Retain any excess business holdings as defined in s. 4943(c) of the Internal Revenue Code;

(c) Make any investments in a manner that subjects the foundation to tax under s. 4944 of the Internal Revenue Code; or

(d) Make any taxable expenditures as defined in s. 4945(d) of the Internal Revenue Code.

(4) Paragraphs (3)(b) and (c) shall not apply to a split interest trust if:

(a) All the interest from income, and none of the remainder interest, of the trust is devoted solely to one or more of the purposes described in s. 170(c)(2)(B) of the Internal Revenue Code, and all amounts in the trust for which a deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal Revenue Code have an aggregate fair market value of not more than 60 percent of the aggregate fair market value of all amounts in the trust; or

(b) A deduction was allowed under s. 170, s. 545(b)(2), s. 556(b)(2), s. 642(c), s. 2055, s. 2106(a)(2), or s. 2522 of the Internal Revenue Code for amounts payable under the terms of the trust to every remainder beneficiary but not to any income beneficiary.

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the state attorney when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to this section unless the trust is amended to comply with the terms of this part.

736.1206 Power to amend trust instrument.—

(1) In the case of a trust that is solely for a named charitable organization or organizations and for which the trustee does not possess any discretion concerning the distribution of income or principal among two or more such organizations, the trustee may amend the governing instrument to comply with the provisions of s. 736.1204(2) with the consent of the named charitable organization or organizations.

(2) In the case of a charitable trust that is not subject to the provisions of subsection (1), the trustee may amend the governing instrument to comply with the provisions of s. 736.1204(2) with the consent of the state attorney.

736.1207 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on the powers and duties that are placed on the trustee by the governing instrument or applicable law for cause shown and on complaint of the trustee, state attorney, or an affected beneficiary and notice to the affected parties.

736.1208 Release; property and persons affected; manner of effecting.—

(1) The trustee of a trust, all of the unexpired interests in which are devoted to one or more charitable purposes, may release a power to select charitable donees unless the creating instrument provides otherwise.

(2) The release of a power to select charitable donees may apply to all or any part of the property subject to the power and may reduce or limit the charitable organizations, or classes of charitable organizations, in whose favor the power is exercisable.

(3) A release shall be effected by a duly acknowledged written instrument signed by the trustee and delivered as provided in subsection (4).

(4) Delivery of a release shall be accomplished as follows:

(a) If the release is accomplished by specifying a charitable organization or organizations as beneficiary or beneficiaries of the trust, by delivery of a copy of the release to each designated charitable organization.

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of a copy of the release to the state attorney.

(5) If a release is accomplished by specifying a public charitable organization or organizations as beneficiary or beneficiaries of the trust, the trust at all times thereafter shall be operated exclusively for the benefit of, and be supervised by, the specified public charitable organization or organizations.

736.1209 Election to come under this part.—With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under s. 736.0838(5) by filing with the state attorney an election, accompanied by the proof of required consent. Thereafter the trust shall be subject to s. 736.1208(5).

736.1210 Interpretation.—This part shall be interpreted to effectuate the intent of the state to preserve, foster, and encourage gifts to, or for the benefit of, charitable organizations.

Section 13. Part XIII of chapter 736, Florida Statutes, consisting of sections 736.1301, 736.1302, and 736.1303, is created to read:

PART XIII

MISCELLANEOUS

736.1301 Electronic records and signatures.—Any provisions of this code governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of

such records or signatures, are deemed to conform to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7002, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

736.1302 Severability clause.—If any provision of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this code that can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

736.1303 Application to existing relationships.—

(1) Except as otherwise provided in this code, on July 1, 2007:

(a) This code applies to all trusts created before, on, or after such date.

(b) This code applies to all judicial proceedings concerning trusts commenced on or after such date.

(c) This code applies to judicial proceedings concerning trusts commenced before such date, unless the court finds that application of a particular provision of this code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this code does not apply and the superseded law applies.

(d) Any rule of construction or presumption provided in this code applies to trust instruments executed before the effective date of this code unless there is a clear indication of a contrary intent in the terms of the trust.

(e) An act done before such date is not affected by this code.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that has commenced to run under any other law before July 1, 2007, that law continues to apply to the right even if it has been repealed or superseded.

Section 14. Paragraph (a) of subsection (5) of section 497.458, Florida Statutes, is amended to read:

497.458 Disposition of proceeds received on contracts.—

(5) The trustee of the trust established pursuant to this section shall only have the power to:

(a) Invest in investments as prescribed in s. 215.47 and exercise the powers set forth in ~~part VIII of chapter 736~~ ~~part IV of chapter 737~~, provided that the licensing authority may by order require the trustee to liquidate or dispose of any investment within 30 days after such order, or within such other times as the order may direct. The licensing authority may issue such order if it determines that the investment violates any provision of this chapter or is not in the best interests of the preneed contract holders whose contracts are secured by the trust funds.

Section 15. Section 518.117, Florida Statutes, is created to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12(20) may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 16. Subsection (2) of section 607.0802, Florida Statutes, is amended to read:

607.0802 Qualifications of directors.—

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile home owners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a qualified beneficiary as defined in s. ~~736.0103(14)~~ 737.303(4)(b) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association, or mobile home owners' association, provided that said beneficiary occupies the unit, parcel, or mobile home.

Section 17. Subsection (6) of section 660.25, Florida Statutes, renumbered as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

660.25 Definitions.—Subject to other definitions contained in other sections of this code, and unless the context otherwise requires, in this chapter:

(6) “Investment instrument” means any security as defined in s. 2(a)(1) of the Securities Act of 1933; any security of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended; any contract of sale of a commodity for future delivery within the meaning of s. 2(i) of the Commodity Exchange Act; or any other interest in securities, including, but not limited to, shares or interests in a private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust, a joint venture, or any other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures, and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise.

~~(7)(6)~~ Terms used but not defined in this chapter, but which are expressly defined in chapter 518, the financial institutions codes, chapter 732, chapter 733, chapter 734, chapter 735, chapter ~~736~~ 737, chapter 738, chapter 744, or chapter 747, shall in this chapter, unless the context otherwise requires, have the meanings ascribed to them in said chapters; and references in any

of said chapters to a “trust company” or to “trust companies” shall include every trust department as defined in s. 658.12.

Section 18. Section 660.417, Florida Statutes, is amended to read:

660.417 Investment of fiduciary funds in investment instruments into mutual fund accounts; permissible activity under certain circumstances; limitations.—

(1) In addition to other investments authorized by law for the investment of funds held by a fiduciary, or by the instrument governing the fiduciary relationship, ~~and notwithstanding any other provision of law,~~ a bank or trust company acting as a fiduciary, agent or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest in investment instruments ~~the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended,~~ so long as the portfolio of such investment instruments consist company or investment trust consists substantially of investments not prohibited by the governing instrument.

(2) The fact that such bank or trust company or an affiliate of the bank or trust company provides services with respect to the investment instruments company or investment trust such as that of an investment adviser, administrator, broker, custodian, transfer agent, placement agent, servicing agent, registrar, underwriter, sponsor, distributor, or manager or in any other capacity, otherwise and is receiving reasonable compensation for those services, shall not preclude such bank or trust company from investing or reinvesting in investment instruments ~~the securities of the open-end or closed-end management investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended.~~ However, with respect to any funds so invested, the basis (expressed as a percentage of asset value or otherwise) upon which such compensation is calculated shall be disclosed (by prospectus, account statement or otherwise) to all persons to whom statements of such account are rendered.

(3) The fact that such bank or trust company or an affiliate of the bank or trust company owns or controls investment instruments shall not preclude the bank or trust company acting as a fiduciary from investing or reinvesting in such investment instruments, provided such investment instruments:

(a) Are held for sale by the bank or trust company or by an affiliate of the bank or trust company in the ordinary course of its business of providing investment services to its customers and do not include any such interests held by the bank or trust company or by an affiliate of the bank or trust company for its own account.

(b) Are sold primarily to accounts for which the bank or trust company is not acting as a fiduciary upon terms that are not more favorable to the buyer than the terms upon which they are sold to accounts for which the bank or trust company is acting as a fiduciary.

Section 19. Paragraphs (a), (d), and (e) of subsection (1) and subsections (2), (3), (9), and (10) of section 660.46, Florida Statutes, are amended to read:

660.46 Substitution of fiduciaries.—

(1) The provisions of this section shall apply to the transfer of fiduciary accounts by substitution, and for those purposes these provisions shall constitute alternative procedures to those provided or required by any other provisions of law relating to the transfer of fiduciary accounts or the substitution of persons acting or who are to act in a fiduciary capacity. In this section, and only for its purposes, the term:

(a) “Limitation notice” has the meaning ascribed in s. 736.1008(4) 737.307(3).

(d) “Trust accounting” has the meaning ascribed in s. 736.08135 737.3035.

(e) “Trust disclosure document” has the meaning ascribed in s. 736.1008(4)(a) 737.307(2).

(2) Any original fiduciary and any proposed substitute fiduciary may, with respect to any fiduciary account or accounts which they shall mutually select, initiate proceedings by joining in the filing of a petition in the circuit court, requesting the substitution of the proposed substitute fiduciary for the original fiduciary as to such fiduciary account or accounts. The petition may be filed in the county in which the main office of the original fiduciary is located and, except to the extent inconsistent with the provisions of this section, shall be governed by the Florida Rules of Civil Procedure; however, if any fiduciary account is then the subject of a proceeding in a court in this state pursuant to the Florida Probate Code, the Florida Guardianship Law, chapter 736 737, or chapter 747, the petition relating to such fiduciary account shall be filed in that proceeding and shall be governed by the procedural or other relevant rules applicable to such proceeding except to the extent inconsistent with the provisions of this section.

(3) Unless a waiver or consent shall be filed in the proceedings as provided in subsection (4), the provisions of s. 731.301(1) and (2) shall apply with respect to notice of the proceedings to all persons who are then co-fiduciaries with the original fiduciary, other than a person joining as a petitioner in the proceedings; to all persons named in the governing instrument as substitutes or successors to the fiduciary capacity of the original fiduciary; to the persons then living who are entitled under the governing instrument to appoint a substitute or successor to act in the fiduciary capacity of the original fiduciary; to all vested beneficiaries of the fiduciary account; and to all then-living originators of the governing instrument. Unless a waiver or consent shall be filed in the proceedings as provided in subsection (4), the provisions of s. 731.301 shall apply with respect to notice to all contingent beneficiaries of the fiduciary account. Only the persons or classes of persons described in the foregoing provisions of this subsection shall be deemed to be interested persons for the purposes of this section and the proceedings and notices provided for in this section; and the provisions of ss. 731.301(3) and 731.303(3) and, (4), and ~~(5)~~, part III of chapter 736, relating to notice

requirements, the effect of notice, and representation of interests, shall apply to the proceedings provided for in this section.

(9) Unless previously or otherwise barred by adjudication, waiver, consent, limitation, or the provisions of subsection (8), an action for breach of trust or breach of fiduciary duties or responsibilities against an original fiduciary in whose place and stead another trust company or trust department has been substituted pursuant to the provisions of this section is barred for any beneficiary who has received a trust disclosure document adequately disclosing the matter unless a proceeding to assert the claim is commenced within 6 months after receipt of the trust disclosure document or the limitation notice that applies to the trust disclosure document, whichever is received later. In any event, and notwithstanding lack of adequate disclosure, all claims against such original fiduciary which has complied with the requirements of s. 736.1008 issued a final trust disclosure document received by the beneficiary and has informed the beneficiary of the location and availability of records for his or her examination are barred as provided in chapter 95. Section ~~736.1008(4)(a) and (c) 737.307(2) and (3)~~ applies to this subsection.

(10) A beneficiary has received a final trust disclosure document or a limitation notice if, when the beneficiary is an adult, it is received by him or her or if, when the beneficiary is a minor or a disabled person, it is received by his or her representative as provided in part III of chapter 736 defined in s. 731.303.

Section 20. Section 660.418, Florida Statutes, is amended to read:

660.418 Investment of fiduciary funds in syndicate securities.—Notwithstanding any other provision of law, any financial institution with fiduciary powers may, in its fiduciary capacity, purchase bonds or other securities underwritten or otherwise distributed by the financial institution or by a syndicate that includes the financial institution, or an affiliate of the financial institution, provided that such purchase is made through a licensed securities dealer, is otherwise prudent, and is not prohibited by the instrument governing the fiduciary relationship and that disclosure is made at least annually to those persons entitled to a statement of accounts pursuant to s. ~~736.0813~~ 737.303(4) indicating that such securities have been or may be purchased. This section applies to purchases of bonds or other securities made at the time of the initial offering of such bonds or securities or at any time after such initial offering.

Section 21. Subsection (5) of section 689.071, Florida Statutes, is amended to read:

689.071 Land trusts transferring interests in real estate; ownership vests in trustee.—

(5) In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of s. ~~736.1013~~ 737.306 apply to the trustee of a land trust created pursuant to this section.

Section 22. Subsections (1) and (4) of section 689.075, Florida Statutes, are amended to read:

689.075 Inter vivos trusts; powers retained by settlor.—

(1) A trust which is otherwise valid and which complies with s. 736.0403 737.111, including, but not limited to, a trust the principal of which is composed of real property, intangible personal property, tangible personal property, the possible expectancy of receiving as a named beneficiary death benefits as described in s. 733.808, or any combination thereof, and which has been created by a written instrument shall not be held invalid or an attempted testamentary disposition for any one or more of the following reasons:

(a) Because the settlor or another person or both possess the power to revoke, amend, alter, or modify the trust in whole or in part;

(b) Because the settlor or another person or both possess the power to appoint by deed or will the persons and organizations to whom the income shall be paid or the principal distributed;

(c) Because the settlor or another person or both possess the power to add to, or withdraw from, the trust all or any part of the principal or income at one time or at different times;

(d) Because the settlor or another person or both possess the power to remove the trustee or trustees and appoint a successor trustee or trustees;

(e) Because the settlor or another person or both possess the power to control the trustee or trustees in the administration of the trust;

(f) Because the settlor has retained the right to receive all or part of the income of the trust during her or his life or for any part thereof; or

(g) Because the settlor is, at the time of the execution of the instrument, or thereafter becomes, sole trustee.

(4) This section shall be applicable to trusts executed before or after July 1, 1969, by persons who are living on or after said date. ~~However, the requirement of conformity with the formalities for the execution of wills as found in paragraph (1)(g) shall not be imposed upon any trust executed prior to July 1, 1969.~~

Section 23. Section 689.175, Florida Statutes, is created to read:

689.175 Worthier title doctrine abolished.—The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor’s “heirs,” “heirs at law,” “next of kin,” “distributees,” “relatives,” or “family,” or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

Section 24. Subsection (8) of section 709.08, Florida Statutes, is amended to read:

709.08 Durable power of attorney.—

(8) STANDARD OF CARE.—Except as otherwise provided in paragraph (4)(e), an attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. ~~736.0901~~ ~~737.302~~. The attorney in fact is not liable to third parties for any act pursuant to the durable power of attorney if the act was authorized at the time. If the exercise of the power is improper, the attorney in fact is liable to interested persons as described in s. 731.201 for damage or loss resulting from a breach of fiduciary duty by the attorney in fact to the same extent as the trustee of an express trust.

Section 25. Paragraph (c) of subsection (2) of section 721.08, Florida Statutes, is amended to read:

721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.—

(2) One hundred percent of all funds or other property which is received from or on behalf of purchasers of the timeshare plan or timeshare interest prior to the occurrence of events required in this subsection shall be deposited pursuant to an escrow agreement approved by the division. The funds or other property may be released from escrow only as follows:

(c) Compliance with conditions.—

1. Timeshare licenses.—If the timeshare plan is one in which timeshare licenses are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

- (I) Expiration of the cancellation period.
- (II) Completion of construction.
- (III) Closing.
- (IV) Either:

(A) Execution, delivery, and recordation by each interestholder of the nondisturbance and notice to creditors instrument, as described in this section; or

(B) Transfer by the developer of legal title to the subject accommodations and facilities, or all use rights therein, into a trust satisfying the requirements of subparagraph 4. and the execution, delivery, and recordation by each other interestholder of the nondisturbance and notice to creditors instrument, as described in this section.

b. A certified copy of each recorded nondisturbance and notice to creditors instrument.

c. One of the following:

(I) A copy of a memorandum of agreement, as defined in s. 721.05, together with satisfactory evidence that the original memorandum of agreement has been irretrievably delivered for recording to the appropriate official responsible for maintaining the public records in the county in which the subject accommodations and facilities are located. The original memorandum of agreement must be recorded within 180 days after the date on which the purchaser executed her or his purchase agreement.

(II) A notice delivered for recording to the appropriate official responsible for maintaining the public records in each county in which the subject accommodations and facilities are located notifying all persons of the identity of an independent escrow agent or trustee satisfying the requirements of subparagraph 4. that shall maintain separate books and records, in accordance with good accounting practices, for the timeshare plan in which timeshare licenses are to be sold. The books and records shall indicate each accommodation and facility that is subject to such a timeshare plan and each purchaser of a timeshare license in the timeshare plan.

2. Timeshare estates.—If the timeshare plan is one in which timeshare estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the timeshare estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

c. Evidence that each accommodation and facility:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument;

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17; or

(III) Has been transferred into a trust satisfying the requirements of subparagraph 4.

d. Evidence that the timeshare estate:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevoca-

bly made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument; or

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17.

3. Personal property timeshare interests.—If the timeshare plan is one in which personal property timeshare interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the personal property timeshare interest is sold by agreement for transfer, evidence that the agreement for transfer complies fully with s. 721.06 and this section.

c. Evidence that one of the following has occurred:

(I) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into a trust satisfying the requirements of subparagraph 4.; or

(II) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into an owners' association satisfying the requirements of subparagraph 5.

d. Evidence of compliance with the provisions of subparagraph 6., if required.

e. If a personal property timeshare plan is created with respect to accommodations and facilities that are located on or in an oceangoing vessel, including a "documented vessel" or a "foreign vessel," as defined and governed by 46 U.S.C., chapter 301:

(I) In making the transfer required in sub-subparagraph c., the developer shall use as its transfer instrument a document that establishes and protects the continuance of the use rights in the subject accommodations and facilities in a manner that is enforceable by the trust or owners' association.

(II) The transfer instrument shall comply fully with the provisions of this chapter, shall be part of the timeshare instrument, and shall contain specific provisions that:

(A) Prohibit the vessel owner, the developer, any manager or operator of the vessel, the owners' association or the trustee, the managing entity, or

any other person from incurring any liens against the vessel except for liens that are required for the operation and upkeep of the vessel, including liens for fuel expenditures, repairs, crews' wages, and salvage, and except as provided in sub-sub-subparagraphs 4.b.(III) and 5.b.(III). All expenses, fees, and taxes properly incurred in connection with the creation, satisfaction, and discharge of any such permitted lien, or a prorated portion thereof if less than all of the accommodations on the vessel are subject to the timeshare plan, shall be common expenses of the timeshare plan.

(B) Grant a lien against the vessel in favor of the owners' association or trustee to secure the full and faithful performance of the vessel owner and developer of all of their obligations to the purchasers.

(C) Establish governing law in a jurisdiction that recognizes and will enforce the timeshare instrument and the laws of the jurisdiction of registry of the vessel.

(D) Require that a description of the use rights of purchasers be posted and displayed on the vessel in a manner that will give notice of such rights to any party examining the vessel. This notice must identify the owners' association or trustee and include a statement disclosing the limitation on incurring liens against the vessel described in sub-sub-sub-subparagraph (A).

(E) Include the nondisturbance and notice to creditors instrument for the vessel owner and any other interestholders.

(F) The owners' association created under subparagraph 5. or trustee created under subparagraph 4. shall have access to any certificates of classification in accordance with the timeshare instrument.

(III) If the vessel is a foreign vessel, the vessel must be registered in a jurisdiction that permits a filing evidencing the use rights of purchasers in the subject accommodations and facilities, offers protection for such use rights against unfiled and inferior claims, and recognizes the document or instrument creating such use rights as a lien against the vessel.

(IV) In addition to the disclosures required by s. 721.07(5), the public offering statement and purchase contract must contain a disclosure in conspicuous type in substantially the following form:

The laws of the State of Florida govern the offering of this timeshare plan in this state. There are inherent risks in purchasing a timeshare interest in this timeshare plan because the accommodations and facilities of the timeshare plan are located on a vessel that will sail into international waters and into waters governed by many different jurisdictions. Therefore, the laws of the State of Florida cannot fully protect your purchase of an interest in this timeshare plan. Specifically, management and operational issues may need to be addressed in the jurisdiction in which the vessel is registered, which is (insert jurisdiction in which vessel is registered). Concerns of purchasers may be sent to (insert name of applicable regulatory agency and address).

4. Trust.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into a trust in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph.

b. Prior to the transfer by each interestholder of the subject accommodations and facilities, or all use rights therein, to a trust, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the trustee accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this subparagraph shall comply with the following provisions:

(I) The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan.

(II) The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the timeshare plan and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The trustee shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan or the owners' association of the timeshare plan shall be the express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession, custody, or control of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

(V) The trustee shall not resign upon less than 90 days' prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

(VI) The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

(VII) For trusts holding property in a timeshare plan located outside this state, the trust and trustee holding such property shall be deemed in compliance with the requirements of this subparagraph if such trust and trustee are authorized and qualified to conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for trusts holding property in a timeshare plan in this state.

(VIII) The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

5. Owners' association.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into an owners' association in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph.

b. Prior to the transfer by each interestholder of the subject accommodations and facilities, or all use rights therein, to an owners' association, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the owners' association accepts such transfer and the responsibilities set forth herein. An owners' association established pursuant to this subparagraph shall comply with the following provisions:

(I) The owners' association shall be a business entity authorized and qualified to conduct business in this state. Control of the board of directors of the owners' association must be independent from any developer or managing entity of the timeshare plan or any interestholder.

(II) The bylaws of the owners' association shall provide that the corporation may not be voluntarily dissolved without the unanimous vote of all owners of personal property timeshare interests so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The owners' association shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy, unless the timeshare plan is terminated pursuant to the timeshare instrument, or unless such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved

by a vote of two-thirds of all voting interests of the association and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The owners' association shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan shall be members of the owners' association and shall be entitled to vote on matters requiring a vote of the owners' association as provided in this chapter or the timeshare instrument. The owners' association shall act as a fiduciary to the purchasers of the timeshare plan. The articles of incorporation establishing the owners' association shall set forth the duties of the owners' association. All expenses reasonably incurred by the owners' association in the performance of its duties, together with any reasonable compensation of the officers or directors of the owners' association, shall be common expenses of the timeshare plan.

(V) The documents establishing the owners' association shall constitute a part of the timeshare instrument.

(VI) For owners' associations holding property in a timeshare plan located outside this state, the owners' association holding such property shall be deemed in compliance with the requirements of this subparagraph if such owners' association is authorized and qualified to conduct owners' association business under the laws of such jurisdiction and the agreement or law governing such arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for owners' associations holding property in a timeshare plan in this state.

(VII) The owners' association shall have appointed a registered agent in this state for service of process. In the event such a registered agent cannot be located, service of process may be made pursuant to s. 721.265.

6. Personal property subject to certificate of title.—If any personal property that is an accommodation or facility of a timeshare plan is subject to a certificate of title in this state pursuant to chapter 319 or chapter 328, the following notation must be made on such certificate of title pursuant to s. 319.27(1) or s. 328.15(1):

The further transfer or encumbrance of the property subject to this certificate of title, or any lien or encumbrance thereon, is subject to the requirements of section 721.17, Florida Statutes, and the transferee or lienor agrees to be bound by all of the obligations set forth therein.

7. If the developer has previously provided a certified copy of any document required by this paragraph, she or he may for all subsequent disbursements substitute a true and correct copy of the certified copy, provided no changes to the document have been made or are required to be made.

8. In the event that use rights relating to an accommodation or facility are transferred into a trust pursuant to subparagraph 4. or into an owners'

association pursuant to subparagraph 5., all other interestholders, including the owner of the underlying fee or underlying personal property, must execute a nondisturbance and notice to creditors instrument pursuant to subsection (3).

Section 26. Paragraph (e) of subsection (1) of section 721.53, Florida Statutes, is amended to read:

721.53 Subordination instruments; alternate security arrangements.—

(1) With respect to each accommodation or facility of a multisite timeshare plan, the developer shall provide the division with satisfactory evidence that one of the following has occurred with respect to each interestholder prior to offering the accommodation or facility as a part of the multisite timeshare plan:

(e) The interestholder has transferred the subject accommodation or facility or all use rights therein to a trust that complies with this paragraph. Prior to such transfer, any lien or other encumbrance against such accommodation or facility shall be made subject to a nondisturbance and notice to creditors instrument pursuant to paragraph (a) or a subordination and notice to creditors instrument pursuant to paragraph (b). No transfer pursuant to this paragraph shall become effective until the trust accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this paragraph shall comply with the following provisions:

1. The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan. The same trustee may hold the accommodations and facilities, or use rights therein, for one or more of the component sites of the timeshare plan.

2. The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

3. The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interests in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or the timeshare property held in trust is deleted from a multisite timeshare plan pursuant to s. 721.552(3), or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by vote of two-thirds of all voting interests of the timeshare plan and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan.

4. All purchasers of the timeshare plan or the owners' association of the timeshare plan shall be express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of

the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015 ~~s. 737.306~~. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

5. The trustee shall not resign upon less than 90 days' prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

6. The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

7. For trusts holding property in component sites located outside this state, the trust holding such property shall be deemed in compliance with the requirements of this paragraph, if such trust is authorized and qualified to conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this paragraph for trusts holding property in a component site located in this state.

8. The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

Section 27. Section 731.103, Florida Statutes, is amended to read:

731.103 Evidence as to death or status.—In proceedings under this code and under chapter 736, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(1) An authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(2) A copy of any record or report of a governmental agency, domestic or foreign, that a person is alive, missing, detained, or, from the facts related, presumed dead is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(3) A person who is absent from the place of his or her last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier. Evidence showing

that the absent person was exposed to a specific peril of death may be a sufficient basis for the court determining at any time after such exposure that he or she died less than 5 years after the date on which his or her absence commenced. A petition for this determination shall be filed in the county in Florida where the decedent maintained his or her domicile or in any county of this state if the decedent was not a resident of Florida at the time his or her absence commenced.

(4) This section does not preclude the establishment of death by direct or circumstantial evidence prior to expiration of the 5-year time period set forth in subsection (3).

Section 28. Section 731.1035, Florida Statutes, is created to read:

731.1035 Applicable rules of evidence.—In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code.

Section 29. Section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736 737, 738, 739, and 744, the term:

(1) “Authenticated,” when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) “Beneficiary” means heir at law in an intestate estate and devisee in a testate estate. The term “beneficiary” does not apply to an heir at law or a devisee after that person’s interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary the beneficiary or beneficiaries of the trust as defined in s. 736.0103(14) 737.303(4)(b) shall be regarded as a beneficiary of the estate.

(3) “Child” includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) “Claim” means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

(5) “Clerk” means the clerk or deputy clerk of the court.

(6) “Court” means the circuit court.

(7) “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(8) “Devise,” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes “gift,” “give,” “bequeath,” “bequest,” and “legacy.” A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(9) “Devisee” means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary ~~the beneficiary or beneficiaries~~ of the trust as defined in s. ~~736.0103(14)~~ 737.303(4)(b) shall be regarded as a devisee.

(10) “Distributee” means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) “Domicile” means a person’s usual place of dwelling and shall be synonymous with residence.

(12) “Estate” means the property of a decedent that is the subject of administration.

(13) “Exempt property” means the property of a decedent’s estate which is described in s. 732.402.

(14) “File” means to file with the court or clerk.

(15) “Foreign personal representative” means a personal representative of another state or a foreign country.

(16) “Formal notice” means formal notice under the Florida Probate Rules.

(17) “Grantor” means one who creates or adds to a trust and includes “settlor” or “trustor” and a testator who creates or adds to a trust.

(18) “Heirs” or “heirs at law” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) “Incompetent” means a minor or a person adjudicated incompetent.

(20) “Informal notice” or “notice” means informal notice under the Florida Probate Rules.

(21) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(22) “Letters” means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated “letters of administration.”

(23) “Other state” means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(24) “Parent” excludes any person who is only a stepparent, foster parent, or grandparent.

(25) “Personal representative” means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(26) “Petition” means a written request to the court for an order.

(27) “Power of appointment” means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

~~(28)~~(27) “Probate of will” means all steps necessary to establish the validity of a will and to admit a will to probate.

~~(29)~~(28) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

~~(30)~~(29) “Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner’s surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.

~~(31)~~(30) “Residence” means a person’s place of dwelling.

~~(32)~~(31) “Residuary devise” means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, “residuary devise” or “residue” means a devise of all assets remaining after satisfying the obligations of the estate.

~~(33)~~(32) “Security” means a security as defined in s. 517.021.

~~(34)~~(33) “Security interest” means a security interest as defined in s. 671.201.

~~(35)~~(34) “Trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

~~(36)~~(35) “Trustee” includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

~~(37)~~(36) “Will” means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Section 30. Paragraph (a) of subsection (1) and subsection (5) of section 731.303, Florida Statutes, are amended to read:

731.303 Representation.—In the administration of or in judicial proceedings involving estates of decedents or trusts, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(a)1. Orders binding the sole holder or all coholders of a power of revocation or a general, special, or limited power of appointment, including one in the form of a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

2. Subparagraph 1. does not apply to:

- a. Any matter determined by the court to involve fraud or bad faith by the trustee;
- b. A power of a trustee to distribute trust property; or
- c. A power of appointment held by a person while the person is the sole trustee.

(5) The holder of a power of appointment over property not held in trust may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. Representation under this subsection does not apply to:

- (a) Any matter determined by the court to involve fraud or bad faith by the trustee;
- (b) A power of a trustee to distribute trust property; or
- (c) A power of appointment held by a person while the person is the sole trustee ~~When a sole holder or coholder of a general, special, or limited power of appointment, including an exercisable power of amendment or revocation over property in an estate or trust, is bound by:~~

- ~~(a) Agreements, waivers, consents, or approvals; or~~
- ~~(b) Accounts, trust accountings, or other written reports that adequately disclose matters set forth therein,~~

~~then all persons who may take by virtue of, and whose interests are subject to, the exercise or nonexercise of the power are also bound, but only to the extent of their interests which could otherwise be affected by the exercise or nonexercise of the power.~~

Section 31. Subsection (5) of section 732.2075, Florida Statutes, is amended to read:

732.2075 Sources from which elective share payable; abatement.—

(5) Unless otherwise provided in the trust instrument or, in the decedent's will if there is no provision in the trust instrument, any amount to be satisfied from trust property shall be paid from the assets of the trust in the order provided for claims under s. ~~736.05053~~ 737.3054(2) and (3). A direction in the decedent's will is effective only for revocable trusts.

Section 32. Subsection (2) of section 732.513, Florida Statutes, is amended to read:

732.513 Devises to trustee.—

- (2) The devise shall not be invalid for any or all of the following reasons:
- (a) Because the trust is amendable or revocable, or both, by any person.
- (b) Because the trust has been amended or revoked in part after execution of the will or a codicil to it.

~~(e) Because the trust instrument or any amendment to it was not executed in the manner required for wills.~~

~~(c)~~(d) Because the only res of the trust is the possible expectancy of receiving, as a named beneficiary, a devise under a will or death benefits as described in s. 733.808, and even though the testator or other person has reserved any or all rights of ownership in the death benefit policy, contract, or plan, including the right to change the beneficiary.

~~(d)~~(e) Because of any of the provisions of s. 689.075.

Section 33. Section 732.603, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 732.603, F.S., for present text.)

732.603 Antilapse; deceased devisee; class gifts.—

(1) Unless a contrary intent appears in the will, if a devisee who is a grandparent, or a descendant of a grandparent, of the testator:

(a) Is dead at the time of the execution of the will;

(b) Fails to survive the testator; or

(c) Is required by the will or by operation of law to be treated as having predeceased the testator,

a substitute gift is created in the devisee's surviving descendants who take per stirpes the property to which the devisee would have been entitled had the devisee survived the testator.

(2) When a power of appointment is exercised by will, unless a contrary intent appears in the document creating the power of appointment or in the testator's will, if an appointee who is a grandparent, or a descendant of a grandparent, of the donor of the power:

(a) Is dead at the time of the execution of the will or the creation of the power;

(b) Fails to survive the testator; or

(c) Is required by the will, the document creating the power, or by operation of law to be treated as having predeceased the testator,

a substitute gift is created in the appointee's surviving descendants who take per stirpes the property to which the appointee would have been entitled had the appointee survived the testator. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an object of a power for the object, a surviving descendant of a deceased object of a power of appointment may be substituted for the object whether or not the descendant is an object of the power.

(3) In the application of this section:

(a) Words of survivorship in a devise or appointment to an individual, such as “if he survives me,” or to “my surviving children,” are a sufficient indication of an intent contrary to the application of subsections (1) and (2). Words of survivorship used by the donor of the power in a power to appoint to an individual, such as the term “if he survives the donee,” or in a power to appoint to the donee’s “then surviving children,” are a sufficient indication of an intent contrary to the application of subsection (2).

(b) The term:

1. “Appointment” includes an alternative appointment and an appointment in the form of a class gift.

2. “Appointee” includes:

a. A class member if the appointment is in the form of a class gift.

b. An individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator.

3. “Devise” also includes an alternative devise and a devise in the form of a class gift.

4. “Devisee” also includes:

a. A class member if the devise is in the form of a class gift.

b. An individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator.

(4) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to s. 736.1106.

Section 34. Section 732.604, Florida Statutes, is amended to read:

732.604 Failure of testamentary provision.—

(1) Except as provided in s. 732.603, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in s. 732.603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason and the devise to one of the residuary devisees fails for any reason, that devise passes to the other residuary devisee, or to the other residuary devisees in proportion to the their interests of each in the remaining part of the residue.

Section 35. Section 732.611, Florida Statutes, is amended to read:

732.611 Devises to multi-generation classes to be per stirpes.—Unless the will provides otherwise, all devises to descendants, issue, and other multi-generation classes shall be per stirpes.

Section 36. Subsection (1) of section 733.212, Florida Statutes, is amended to read:

733.212 Notice of administration; filing of objections.—

(1) The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative:

- (a) The decedent's surviving spouse;
- (b) Beneficiaries;

(c) The trustee of any trust described in s. 733.707(3) and each qualified beneficiary of the trust as defined in s. ~~736.0103(14)~~ ~~737.303(4)(b)~~, if each trustee is also a personal representative of the estate; and

- (d) Persons who may be entitled to exempt property

in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees under a known prior will or heirs or others who claim or may claim an interest in the estate.

Section 37. Subsection (1) of section 733.602, Florida Statutes, is amended to read:

733.602 General duties.—

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by part VII of chapter 736 ~~s. 737.302~~. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

Section 38. Subsection (4) of section 733.805, Florida Statutes, is amended to read:

733.805 Order in which assets abate.—

(4) In determining the contribution required under s. 733.607(2), subsections (1)-(3) of this section and s. ~~736.05053~~ ~~737.3054(2)~~ shall be applied as if the beneficiaries of the estate and the beneficiaries of a trust described in s. 733.707(3), other than the estate or trust itself, were taking under a common instrument.

Section 39. Paragraph (j) of subsection (1) of section 733.817, Florida Statutes, is amended to read:

733.817 Apportionment of estate taxes.—

(1) For purposes of this section:

(j) “Residuary devise” has the meaning set forth in s. 731.201~~(31)~~.

Section 40. Paragraphs (a) and (f) of subsection (8) and paragraphs (a) and (d) of subsection (9) of section 738.104, Florida Statutes, are amended to read:

738.104 Trustee’s power to adjust.—

(8) With respect to a trust in existence on January 1, 2003:

(a) A trustee shall not have the power to adjust under this section until the statement required in subsection (9) is provided and either no objection is made or any objection which is made has been terminated.

1. An objection is made if, within 60 days after the date of the statement required in subsection (9), a super majority of the eligible trust beneficiaries deliver to the trustee a written objection to the application of this section to such trust. An objection shall be deemed to be delivered to the trustee on the date the objection is mailed to the mailing address listed in the notice provided in subsection (9).

2. An objection is terminated upon the earlier of the receipt of consent from a super majority of eligible trust beneficiaries of the class that made the objection, or the resolution of the objection pursuant to paragraph (c).

(f) The objection of a super majority of eligible beneficiaries under this subsection shall be valid for a period of 1 year after the date of the notice set forth in subsection (9). Upon expiration of the objection, the trustee may thereafter give a new notice under subsection (9).

(9)(a) A trustee of a trust in existence on January 1, 2003, that is not prohibited under subsection (3) from exercising the power to adjust shall, any time prior to initially exercising the power, provide to all eligible ~~reasonably ascertainable current~~ beneficiaries described in s. 737.303(4)(b)1. ~~and all reasonably ascertainable remainder beneficiaries described in s. 737.303(4)(b)2.~~ a statement containing the following:

1. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information;

2. A statement that unless a super majority of the eligible beneficiaries objects to the application of this section to the trust within 60 days after the date the statement pursuant to this subsection was served, s. 738.104 shall apply to the trust; and

3. A statement that, if s. 738.104 applies to the trust, the trustee will have the power to adjust between income and principal and that such a power may have an effect on the distributions to such beneficiary from the trust.

(d) For purposes of subsection (8) and this subsection, the term:

1. “Eligible beneficiaries” means:

a. If at the time the determination is made there is one or more beneficiaries described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (c); or

b. If there is no beneficiary described in s. 736.0103(14)(c), the beneficiaries described in s. 736.0103(14)(a) and (b).

2. A “Super majority of the eligible trust beneficiaries” means:

a. If at the time the determination is made there is one or more beneficiaries described in s. 736.0103(14)(c), at least two-thirds in interest of the reasonably ascertainable current beneficiaries described in s. 736.0103(14)(a) ~~737.303(4)(b)1.~~ or two-thirds in interest of the reasonably ascertainable remainder beneficiaries described in s. 736.0103(14)(c) ~~737.303(4)(b)2.~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(14)(c), at least two-thirds in interest of the beneficiaries described in s. 736.0103(14)(a) or two-thirds in interest of the beneficiaries described in s. 736.0103(14)(b), if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 41. Subsection (4) of section 738.1041, Florida Statutes, is amended to read:

738.1041 Total return unitrust.—

(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. ~~736.1008~~ ~~737.307~~. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.

Section 42. Subsection (5) of section 738.202, Florida Statutes, is amended to read:

738.202 Distribution to residuary and remainder beneficiaries.—

(5) The value of trust assets shall be determined on an asset-by-asset basis and shall be conclusive if reasonable and determined in good faith. Determinations based on appraisals performed within 2 years before or after the valuation date shall be presumed reasonable. The value of trust assets shall be conclusively presumed to be reasonable and determined 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. ~~736.1008~~ ~~737.307~~.

Section 43. Paragraph (a) of subsection (12) of section 739.102, Florida Statutes, is amended to read:

739.102 Definitions.—As used in this chapter, the term:

(12) “Trust” means:

(a) An express trust (including an honorary trust or a trust under s. 736.0408 ~~737.116~~), charitable or noncharitable, with additions thereto, whenever and however created; and

As used in this chapter, the term “trust” does not include a constructive trust or a resulting trust.

Section 44. Paragraphs (b) and (f) of subsection (6) of section 744.331, Florida Statutes, are amended to read:

744.331 Procedures to determine incapacity.—

(6) ORDER DETERMINING INCAPACITY.—If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. A person is determined to be incapacitated only with respect to those rights specified in the order.

~~(b) When an order determines that a person is incapable of exercising delegable rights, the court must consider and find whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. A guardian must be appointed to exercise the incapacitated person’s delegable rights unless the court finds there is an alternative. A guardian may not be appointed if the court finds there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. In any order declaring a person incapacitated the court must find that alternatives to guardianship were considered and that no alternative to guardianship will sufficiently address the problems of the ward.~~

(f) Upon the filing of a verified statement by an interested person stating:

1. That he or she has a good faith belief that the alleged incapacitated person’s trust, trust amendment, or durable power of attorney is invalid; and

2. A reasonable factual basis for that belief,

~~the trust, trust amendment, or durable power of attorney shall not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian does not limit the court’s power to determine that certain authority granted by a durable power of attorney is to remain exercisable by the attorney in fact. When an order is entered which determines that a person is incapable of exercising delegable rights, a guardian must be appointed to exercise those rights.~~

Section 45. Paragraph (a) of subsection (6) of section 744.361, Florida Statutes, is amended to read:

744.361 Powers and duties of guardian.—

(6) A guardian who is given authority over any property of the ward shall:

(a) Protect and preserve the property and invest it prudently as provided in chapter 518 ~~defined in s. 737.302~~, apply it as provided in s. 744.397, and account for it faithfully.

Section 46. Subsections (11) and (18) of section 744.441, Florida Statutes, are amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. Before authorizing a guardian to bring an action described in s. 736.0207, the court shall first find that the action appears to be in the ward's best interests during the ward's probable lifetime. If the court denies a request that a guardian be authorized to bring an action described in s. 736.0207, the court shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

(18) When the ward's will evinces an objective to obtain a United States estate tax charitable deduction by use of a split interest trust (as that term is defined in s. ~~736.1201~~ 737.501), but the maximum charitable deduction otherwise allowable will not be achieved in whole or in part, execute a codicil on the ward's behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.

Section 47. Section 744.462, Florida Statutes, is created to read:

744.462 Determination regarding alternatives to guardianship.—Any judicial determination concerning the validity of the ward's durable power of attorney, trust, or trust amendment shall be promptly reported in the guardianship proceeding by the guardian of the property. If the instrument has been judicially determined to be valid or if, after the appointment of a guardian, a petition is filed alleging that there is an alternative to guardianship which will sufficiently address the problems of the ward, the court shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

Section 48. Sections 737.101, 737.105, 737.106, 737.111, 737.115, 737.116, 737.201, 737.202, 737.203, 737.2035, 737.204, 737.2041, 737.205, 737.206, 737.2065, 737.207, 737.208, 737.209, 737.301, 737.302, 737.303,

737.3035, 737.304, 737.305, 737.3053, 737.3054, 737.3055, 737.306, 737.3061, 737.307, 737.308, 737.309, 737.401, 737.402, 737.4025, 737.403, 737.4031, 737.4032, 737.4033, 737.404, 737.405, 737.406, 737.501, 737.502, 737.503, 737.504, 737.505, 737.506, 737.507, 737.508, 737.509, 737.510, 737.511, 737.512, 737.6035, 737.621, 737.622, 737.623, 737.624, 737.625, 737.626, and 737.627, Florida Statutes, are repealed.

Section 49. This act shall take effect July 1, 2007.

Approved by the Governor June 14, 2006.

Filed in Office Secretary of State June 14, 2006.