

## Committee Substitute for Senate Bill No. 1956

An act relating to land trusts; amending s. 689.071, F.S.; providing a short title; providing definitions; revising provisions relating to land trust transfers of real property and vesting of ownership in a trustee; deleting a requirement that a trustee be qualified to act as a fiduciary; deleting obsolete references to “dower” and “curtesy”; specifying rights, liabilities, and duties of land trust beneficiaries; providing that the principal residence of a beneficiary which is held in a land trust is entitled to the homestead tax exemption under certain circumstances; providing for the appointment of successor trustees; providing requirements for declarations of appointment; providing that a trustee of a land trust may be a creditor of the trust or of a trust beneficiary; amending s. 201.02, F.S.; conforming a cross-reference; providing application; providing an effective date.

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

Section 1. Section 689.071, Florida Statutes, is amended to read:

689.071 Florida Land Trust Act ~~trusts transferring interests in real estate; ownership vests in trustee.—~~

(1) SHORT TITLE.—This section may be cited as the “Florida Land Trust Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Beneficial interest” means any interest, vested or contingent and regardless of how small or minimal such interest may be, in a land trust which is held by a beneficiary.

(b) “Beneficiary” means any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee serves as trustee.

(c) “Holder of the power of direction” means any person or entity having the authority to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to the administration of a land trust.

(d) “Land trust” is not the creation of an entity, but means any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, for the use or benefit of any beneficiary, under which the title to real property, both legal and equitable, is held by a trustee, subject only to the execution of the trust, which may be enforced by the beneficiaries.

(e) “Trustee” means the person or entity designated in a trust instrument to hold legal and equitable title to property of a land trust.

(3)(4) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as “the recorded instrument,” transferring any interest in real property in this state, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity duly formed under the laws of its state of qualification qualified to act as a fiduciary in this state, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated “trustee,” or “as trustee,” without therein naming the beneficiaries of such trust, whether or not reference is made in the recorded instrument to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee full rights of ownership over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof; provided, the recorded instrument confers on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

(4)(2) NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real property or any interest in such property ~~properties~~ held in trust under the recorded instrument, as hereinabove provided for, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.

(5)(3) BENEFICIARY CLAIMS.—All persons dealing with the trustee under the recorded instrument as hereinabove provided take any interest transferred by the trustee thereunder, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such beneficiaries. ~~However, this section does not prevent including, and without limiting the foregoing to, any claim arising out of any dower or curtesy interest of the spouse of any beneficiary thereof; provided, nothing herein contained prevents a beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.~~

(6)(4) PERSONAL PROPERTY.—In all cases in which the recorded instrument, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries thereunder to be personal property only,

such provision shall be controlling for all purposes when such determination becomes an issue under the laws or in the courts of this state.

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

**(8) LAND TRUST BENEFICIARIES.**—

(a) Except as provided in this section, the beneficiaries of a land trust are not liable, solely by being a beneficiary, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust.

(b) Any beneficiary acting under the trust agreement of a land trust is not liable to the land trust's trustee or to any other beneficiary for the beneficiary's good faith reliance on the provisions of the trust agreement.

(c) Chapter 679 applies to the perfection of any security interest in a beneficial interest in a land trust. The perfection of a security interest in a beneficial interest in a land trust does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.

(d) A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or beneficiary agreement.

(e) Any subsequent document appearing of record in which a beneficiary of a trust transfers or encumbers the beneficial interest in the trust does not diminish or impair the authority of the trustee under the terms of the recorded instrument. Parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.

(f) An unrecorded trust agreement giving rise to a recorded instrument for a land trust may provide that one or more persons or entities have the power to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to administration of the land trust. The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders of the power for the use and benefit of all holders of any beneficial interest in the land trust. In the absence of a provision in the land trust agreement to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all holders of any beneficial interest in the trust, unless otherwise provided in the land trust agreement. A beneficial interest is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest.

(g) A trust relating to real estate does not fail, and any use relating to real estate may not be defeated, because beneficiaries are not specified by

name in the recorded deed of conveyance to the trustee or because duties are not imposed upon the trustee. The power conferred by any recorded deed of conveyance on a trustee to sell, lease, encumber, or otherwise dispose of property described in the deed is effective, and a person dealing with the trustee is not required to inquire any further into the right of the trustee to act or the disposition of any proceeds.

(h) The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided the beneficiary qualifies for the homestead exemption under chapter 196.

(9) SUCCESSOR TRUSTEE.—

(a) The provisions of s. 737.309 relating to the resignation of a trustee do not apply to the appointment of a successor trustee under this section.

(b) If the recorded instrument and the unrecorded land trust agreement are silent as to the appointment of a successor trustee in the event of the death, incapacity, resignation, or termination due to dissolution of a land trustee or if a land trustee is unable to serve as trustee, one or more persons or entities having the power of direction of the land trust agreement may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the office of the recorder of deeds in the county in which the trust property is located. The declaration must be signed by a beneficiary or beneficiaries of the trust and by each successor trustee, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.
2. The name and address of the former trustee.
3. The name and address of each successor trustee.
4. A statement that each successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust, together with an acceptance of appointment by each successor trustee.

(c) If the recorded instrument is silent as to the appointment of a successor trustee or trustees but an unrecorded land trust agreement provides for the appointment of a successor trustee or trustees in the event of the death, incapacity, resignation, or termination due to dissolution of the land trustee, upon the appointment of any successor trustee pursuant to the terms of the unrecorded land trust agreement, each successor trustee shall file a declaration of appointment of a successor trustee in the office of the recorder of deeds in the county in which the trust property is located. The declaration must be signed by both the former trustee and each successor trustee, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.

2. The name and address of the former trustee.
3. The name and address of the successor trustee.
4. A statement of resignation by the former trustee and a statement of acceptance of appointment by each successor trustee.
5. A statement that each successor trustee was duly appointed under the terms of the unrecorded land trust agreement.

If the appointment of any successor trustee is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

(d) If the recorded instrument provides for the appointment of any successor trustee and any successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of any successor trustee are required under this section.

(e) Each successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that any successor land trustee is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with any successor trustee pursuant to a declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded declarations or agreements.

(f) A land trust agreement may provide that the trustee, when directed to do so by the beneficiaries of the land trust or legal representatives of the beneficiaries, may convey the trust property directly to another trustee on behalf of the beneficiaries or others named by the beneficiaries.

#### (10) TRUSTEE AS CREDITOR.—

(a) If a debt is secured by a security interest in a beneficial interest in a land trust or by a mortgage on land trust property, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain any necessary security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

(b) A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it is not evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

~~(11)~~(6) REMEDIAL ACT.—This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

~~(12)~~(7) EXCLUSION.—This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

Section 2. Subsection (4) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(4) The tax imposed by subsection (1) shall also be payable upon documents which convey or transfer, pursuant to s. 689.071, any beneficial interest in lands, tenements, or other real property, or any interest therein, even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071~~(6)~~(4). The tax shall be paid upon execution of any such document.

Section 3. This act is intended to clarify existing law and applies to all land trusts whether created before, on, or after October 1, 2006.

Section 4. This act shall take effect October 1, 2006.

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.