

## Council Substitute for House Bill No. 743

An act relating to trusts; amending s. 660.417, F.S.; revising criteria for investments in certain investment instruments; creating s. 736.04117, F.S.; providing criteria, requirements, and limitations on a trustee's power to invade the principal of a trust; specifying conditions under which discretionary distributions may be made in further trust; amending s. 736.0802, F.S.; specifying additional trust property transactions not voidable by a beneficiary; revising certain disclosure and applicability requirements; broadening authority for investing in certain investment instruments; revising definitions; excusing trustees from certain compliance requirements under certain circumstances; amending s. 736.0816, F.S.; defining the term "mutual fund" for certain purposes; amending s. 736.1008, F.S.; revising effective dates relating to limitations on proceedings against trustees; amending s. 736.1011, F.S.; providing construction relating to trustee drafts of exculpatory terms in a trust instrument; amending s. 689.071, F.S.; limiting the definition of the term "land trust" to an arrangement in which title to real property is vested in a trustee by a recorded instrument that confers certain authority as prescribed by state law; providing that such a recorded instrument does not itself create an entity; providing that a recorded instrument is effective regardless of whether it refers to beneficiaries of the trust; providing that a recorded instrument vests both legal and equitable title to real property or the interest therein in the trustee; conforming cross-references; amending s. 731.201, F.S.; revising a definition; amending s. 731.303, F.S.; excluding trusts from guidelines regarding administration and judicial proceedings; amending s. 736.0102, F.S.; conforming a cross-reference; amending s. 736.0501, F.S.; limiting the ability of creditors or assignees of a beneficiary to reach the beneficiary's interest in a trust; amending s. 736.0502, F.S.; clarifying the application of restrictions on transferring a beneficiary's interest under a spendthrift provision; amending s. 736.0503, F.S.; providing an exception to a provision authorizing the attachment of trust distributions; amending s. 736.0504, F.S.; defining the term "discretionary distribution"; prohibiting certain creditors from compelling distributions or attaching a beneficiary's interest or expectancy; amending s. 736.0813, F.S.; conforming a date of applicability of the accounting provision and corresponding limitations to the effective date of the code; amending s. 736.1106, F.S.; providing that certain antilapse provisions continue to apply to irrevocable trusts created between June 12, 2003, and July 1, 2007; amending s. 736.1204, F.S.; clarifying the use of income interest of a trust; amending ss. 736.1209 and 736.1001, F.S., relating to the release of power by a trustee and removal of a trustee; conforming cross-references; providing an effective date.

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

Section 1. Subsection (3) of section 660.417, Florida Statutes, as amended by section 18 of chapter 2006-217, Laws of Florida, is amended to read:

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

(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) When ~~Are~~ sold primarily to accounts for which the bank or trust company is ~~not~~ acting as a trustee of a trust as defined in s. 731.201(35):

1. Are available for sale to accounts of other customers; and
2. If sold to other customers, are not sold to the trust accounts fiduciary upon terms that are less ~~not more~~ favorable to the buyer than the terms upon which they are normally sold to the other customers accounts for which the bank or trust company is acting as a fiduciary.

Section 2. Section 736.04117, Florida Statutes, is created to read:

736.04117 Trustee's power to invade principal in trust.—

(1)(a) Unless the trust instrument expressly provides otherwise, a trustee who has absolute power under the terms of a trust to invade the principal of the trust, referred to in this section as the "first trust," to make distributions to or for the benefit of one or more persons may instead exercise the power by appointing all or part of the principal of the trust subject to the power in favor of a trustee of another trust, referred to in this section as the "second trust," for the current benefit of one or more of such persons under the same trust instrument or under a different trust instrument; provided:

1. The beneficiaries of the second trust may include only beneficiaries of the first trust;

2. The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust; and

3. If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code of 1986, as amended, the second trust shall not contain any provision which, if included in the first trust, would have pre-

vented the first trust from qualifying for such a deduction or would have reduced the amount of such deduction.

(b) For purposes of this subsection, an absolute power to invade principal shall include a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support, whether or not the term “absolute” is used. A power to invade principal for purposes such as best interests, welfare, comfort, or happiness shall constitute an absolute power not limited to specific or ascertainable purposes.

(2) The exercise of a power to invade principal under subsection (1) shall be by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the first trust.

(3) The exercise of a power to invade principal under subsection (1) shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee’s creditors, the trustee’s estate, or the creditors of the trustee’s estate, and shall be subject to the provisions of s. 689.225 covering the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

(4) The trustee shall notify all qualified beneficiaries of the first trust, in writing, at least 60 days prior to the effective date of the trustee’s exercise of the trustee’s power to invade principal pursuant to subsection (1), of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power shall satisfy the trustee’s notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee’s power to invade principal shall be exercisable immediately. The trustee’s notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee’s power to invade principal except as provided in other applicable provisions of this code.

(5) The exercise of the power to invade principal under subsection (1) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(6) Nothing in this section is intended to create or imply a duty to exercise a power to invade principal and no inference of impropriety shall be made as a result of a trustee not exercising the power to invade principal conferred under subsection (1).

(7) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust or under any other section of this code or under another provision of law or under common law.

Section 3. Subsections (2) and (5) of section 736.0802, Florida Statutes, are amended to read:

736.0802 Duty of loyalty.—

(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; or;
- (g) The transaction is one by a corporate trustee that involves a money market mutual fund, mutual fund, or a common trust fund described in s. 736.0816(3).

(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, pursuant to this subsection, 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, pursuant to this subsection, 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 created on or after July 1, 2007, that are not described in subparagraph 2. and to irrevocable trusts created prior to July 1, 2007, only as follows:

a. Such paragraphs shall not apply until 60 days after the statement required in paragraph (f) is provided and a majority of the qualified beneficiaries have provided written consent. All consents must be obtained within 90 days after the date of delivery of the written request. Once given, consent shall be valid as to all investment instruments acquired pursuant to the consent prior to the date of any withdrawal of the consent 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.~~

~~(I)(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.

~~(II)(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 consent objection of a majority of the qualified super majority of eligible beneficiaries under this subparagraph may thereafter be withdrawn prospectively removed by the written notice consent of a super majority of any one of the class or classes of the qualified those eligible beneficiaries that made the objection.~~

~~(f)1. The trustee of a trust described in s. 731.201(35) may request authority to invest in Any time prior to initially investing in any investment instruments instrument described in this subsection other than a qualified investment instrument, by providing the trustee of a trust described in subparagraph (c)3. shall provide to all qualified beneficiaries a written request 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 the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries, 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 a majority of each class of qualified beneficiaries ~~consent 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, ~~that such investment instruments may include investment instruments sold primarily to trust accounts~~, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

~~d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.~~

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).~~

a.b. “Super Majority of the qualified 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 a majority two-thirds in interest of the beneficiaries described in s. 736.0103(14)(a), at least a majority in interest of the beneficiaries described in s. 736.0103(14)(b), and at least a majority 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, a majority two-thirds in number of each either such class; or

(II) If there is no beneficiary as described in s. 736.0103(14)(c), at least a majority two-thirds in interest of the beneficiaries described in s. 736.0103(14)(a) and at least a majority 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, a majority two-thirds in number of each either such class.

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

c.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).

(h) This subsection is not the exclusive authority under this code for investing in investment instruments described in paragraph (a). A trustee who invests trust funds in investment instruments described in paragraph (a) is not required to comply with paragraph (b), paragraph (c), or paragraph (f) if the trustee is permitted to invest in such investment instruments pursuant to subsection (2).

Section 4. Subsection (3) of section 736.0816, Florida Statutes, is amended to read:

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

(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. As used in this subsection, the term “mutual fund” includes 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.

Section 5. Subsection (6) of section 736.1008, Florida Statutes, is amended to read:

736.1008 Limitations on proceedings against trustees.—

(6) This section applies to trust accountings for accounting periods beginning on or after ~~July January 1, 2007~~ 2008, and to written reports, other than trust accountings, received by a beneficiary on or after ~~July January 1, 2007~~ 2008.

Section 6. Subsection (2) of section 736.1011, Florida Statutes, is amended to read:

736.1011 Exculpation of trustee.—

(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:

(a) The trustee proves that the exculpatory term is fair under the circumstances.

(b) ~~and that~~ The term’s existence and contents were adequately communicated directly to the settlor or the independent attorney of the settlor. This paragraph applies only to trusts created on or after July 1, 2007.

Section 7. Paragraph (d) of subsection (2), subsections (3) and (7), and paragraph (a) of subsection (9) of section 689.071, Florida Statutes, as amended by section 21 of chapter 2006-217, Laws of Florida, are amended to read:

689.071 Florida Land Trust Act.—

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



(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 vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in subsection (3). The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law held by a trustee, subject only to the execution of the trust, which may be enforced by the beneficiaries.

(3) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as the “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, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated “trustee,” or “as trustee,” ~~with- out therein naming the beneficiaries of such trust, whether or not reference is made in the recorded instrument to the beneficiaries of such trust or to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee both legal and equitable title, and 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, to 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.~~

(7) TRUSTEE LIABILITY.—In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of ss. 736.08125 and 736.1013 s. 736.1013 apply to the trustee of a land trust created pursuant to this section.

(9) SUCCESSOR TRUSTEE.—

(a) The provisions of s. 736.0705 s. 737.309 relating to the resignation of a trustee do not apply to the appointment of a successor trustee under this section.

Section 8. Subsection (35) of section 731.201, Florida Statutes, as amended by section 29 of chapter 2006-217, Laws of Florida, 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, 738, 739, and 744, the term:

(35) “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. 689.071, except to the extent provided in s. 689.071(7) ~~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.

Section 9. Section 731.303, Florida Statutes, as amended by section 30 of chapter 2006-217, Laws of Florida, is 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.

(b) To the extent there is no conflict of interest between them or among the persons represented:

1. Orders binding a guardian of the property bind the ward.

2. Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will, in establishing or adding to a trust, in reviewing the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties. However, for purposes of this section, a conflict of interest shall be deemed to exist when each trustee of a trust that is a beneficiary of the estate is also a personal representative of the estate.

3. Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate, in actions or proceedings by or against the estate.

(c) An unborn or unascertained person, or a minor or any other person under a legal disability, who is not otherwise represented is bound by an order to the extent that person's interest is represented by another party having the same or greater quality of interest in the proceeding.

(2) Orders binding a guardian of the person shall not bind the ward.

(3) In proceedings involving the administration of estates ~~or trusts~~, notice is required as follows:

(a) Notice as prescribed by law shall be given to every interested person, or to one who can bind the interested person as described in paragraph (1)(a) or paragraph (1)(b). Notice may be given both to the interested person and to another who can bind him or her.

(b) Notice is given to unborn or unascertained persons who are not represented pursuant to paragraph (1)(a) or paragraph (1)(b) by giving notice to all known persons whose interests in the proceedings are the same as, or of a greater quality than, those of the unborn or unascertained persons.

(4) If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, or a person whose identity or address is unknown. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(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.

Section 10. Section 736.0102, Florida Statutes, is amended to read:

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. 689.071, except to the extent provided in s. 689.071(7) ~~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.

Section 11. Section 736.0501, Florida Statutes, is amended to read:

736.0501 Rights of beneficiary's creditor or assignee.—~~Except as provided in s. 736.0504,~~ 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.

Section 12. Subsection (1) of section 736.0502, Florida Statutes, is amended to read:

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 the terms of which are included in an instrument executed before in-existence on the effective date of this code.

Section 13. Subsection (3) of section 736.0503, Florida Statutes, is amended to read:

736.0503 Exceptions to spendthrift provision.—

(3) Except as otherwise provided in this subsection and in s. 736.0504, 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.

Section 14. Section 736.0504, Florida Statutes, is amended to read:

736.0504 Discretionary trusts; effect of standard.—

(1) As used in this section, the term "discretionary distribution" means a distribution that is subject to the trustee's discretion whether or not the discretion is expressed in the form of a standard of distribution and whether or not the trustee has abused the discretion.

(2) Whether or not a trust contains a spendthrift provision, if a trustee may make discretionary distributions to or for the benefit of a beneficiary, a creditor of the beneficiary, including a creditor as described in s. 736.0503(2), may not:

(a) Compel a distribution that is subject to the trustee's discretion; or

(b) Attach or otherwise reach the interest, if any, which the beneficiary might have as a result of the trustee's authority to make discretionary distributions to or for the benefit of the beneficiary. 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.~~

~~(3)(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.

~~(4)(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.

Section 15. Subsection (5) of section 736.0813, Florida Statutes, is amended to read:

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.

(5) This section applies to trust accountings rendered for accounting periods beginning on or after July 1, 2007 ~~January 1, 2008~~.

Section 16. Subsection (5) of section 736.1106, Florida Statutes, is amended to read:

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

(5) Subsections (1) through (4) apply ~~This section applies~~ to all trusts other than trusts that were irrevocable before the effective date of this code. Sections 732.603, 732.604, and 737.6035, as they exist on June 30, 2007, continue to apply to other trusts executed on or after June 12, 2003.

Section 17. Paragraph (a) of subsection (4) of section 736.1204, Florida Statutes, is amended to read:

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

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

(a) All the income 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

Section 18. Section 736.1209, Florida Statutes, is amended to read:

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. 736.1208(5) ~~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).

Section 19. Paragraph (g) of subsection (2) of section 736.1001, Florida Statutes, is amended to read:

736.1001 Remedies for breach of trust.—

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

(g) Remove the trustee as provided in s. 736.0706 ~~s. 736.706~~;

Section 20. This act shall take effect July 1, 2007.

Approved by the Governor June 15, 2007.

Filed in Office Secretary of State June 15, 2007.