

## Committee Substitute for House Bill No. 965

An act relating to trust administration; amending s. 736.0103, F.S.; revising a definition to exclude certain interests as beneficial interests; providing construction; amending s. 736.0105, F.S.; providing an additional limitation on terms of a trust prevailing over provisions of the Florida Trust Code; amending s. 736.0302, F.S.; revising representation authority for holders of a power of appointment; providing a definition; amending s. 736.0306, F.S.; authorizing trust instruments to authorize certain persons to designate one or more persons to represent and bind a beneficiary and receive certain information; amending s. 736.0703, F.S.; authorizing a cotrustee to delegate investment decisions to a cotrustee; revising provisions for absence of liability of excluded trustees under certain circumstances; amending s. 736.0807, F.S.; providing that a cotrustee who has delegated investment functions is not liable for investment decisions; amending s. 736.1106, F.S.; revising a definition applicable to antilapse of a trust distribution; providing an effective date.

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

Section 1. Subsection (4) of section 736.0103, Florida Statutes, is amended to read:

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

(4) “Beneficiary” means a person who:

(a) has a present or future beneficial interest in a trust, vested or contingent,<sup>;</sup> or who

(b) holds a power of appointment over trust property in a capacity other than that of trustee. An interest as a permissible appointee of a power of appointment, held by a person in a capacity other than that of trustee, is not a beneficial interest for purposes of this subsection. Upon an irrevocable exercise of a power of appointment, the interest of a person in whose favor the appointment is made shall be considered a present or future beneficial interest in a trust in the same manner as if the interest had been included in the trust instrument.

Section 2. Paragraph (f) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

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

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

736.0107 for the designation of a jurisdiction the law of which determines the meaning and effect of the terms of a trust.

Section 3. Section 736.0302, Florida Statutes, is amended to read:

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

~~(3)~~(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~~

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

(4) As used in this section, the term “power of appointment” does not include a power of a trustee to make discretionary distributions of trust property.

Section 4. Subsection (1) of section 736.0306, Florida Statutes, is amended to read:

736.0306 Designated representative.—

(1) If specifically nominated ~~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. The trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report.

Section 5. Subsections (5) and (9) of section 736.0703, Florida Statutes, are amended to read:

736.0703 Cotrustees.—

(5) A cotrustee may not delegate to another cotrustee the performance of a function the settlor reasonably expected the cotrustees to perform jointly, except that a cotrustee may delegate investment functions to a cotrustee pursuant to and in compliance with s. 518.112. A cotrustee may revoke a delegation previously made.

(9) If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion

of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. Except in cases of willful misconduct on the part of the ~~directed~~ trustee with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power, regardless of the information available to the excluded trustees. The excluded trustees are relieved of any obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

Section 6. Subsections (1) and (3) of section 736.0807, Florida Statutes, are amended to read:

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, including investment functions pursuant to s. 518.112. 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.

(3) A trustee who complies with subsection (1) and, when investment functions are delegated, s. 518.112 is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

Section 7. Paragraph (b) of subsection (1) 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.—

- (1) As used in this section, the term:
  - (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. The distribution date refers to the time that the right to possession or enjoyment arises and is not necessarily the time that any benefit of the right is realized.

Section 8. This act shall take effect July 1, 2009.

Approved by the Governor June 2, 2009.

Filed in Office Secretary of State June 2, 2009.