

## CHAPTER 2010-172

### Committee Substitute for Committee Substitute for Senate Bill No. 926

An act relating to trusts; creating s. 736.0902, F.S.; limiting the duties and liability of certain trustees with respect to contracts for life insurance; defining the term “qualified person”; providing for the application and nonapplication of certain provisions of state law; requiring that notice of such provisions be given under certain circumstances; providing requirements for such notice; providing that such provisions do not apply if a party notified of the application of certain provisions of state law objects in writing; creating a rebuttable presumption of delivery of notice; defining the term “affiliate” for specified purposes; providing that certain provisions of state law do not apply under specified circumstances; prohibiting the compensation of a trustee for the performance of certain activities; amending s. 518.112, F.S.; expanding the list of delegable investment functions for certain fiduciaries; revising requirements for the provision of written notice by a trustee of an intent to begin delegating investment functions; providing an effective date.

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

Section 1. Section 736.0902, Florida Statutes, is created to read:

736.0902 Nonapplication of prudent investor rule.—

(1) Notwithstanding the provisions of s. 518.11 or s. 736.0804, with respect to any contract for life insurance acquired or retained on the life of a qualified person, a trustee has no duty to:

(a) Determine whether the contract of life insurance is or was procured or effected in compliance with s. 627.404;

(b) Determine whether any contract of life insurance is, or remains, a proper investment;

(c) Investigate the financial strength of the life insurance company;

(d) Determine whether to exercise any policy option available under the contract for life insurance;

(e) Diversify any such contract for life insurance or the assets of the trust with respect to the contract for life insurance; or

(f) Inquire about or investigate the health or financial condition of any insureds.

(2) For purposes of this section, a “qualified person” is a person who is insured or a proposed insured, or the spouse of that person, who has provided

the trustee with the funds used to acquire or pay premiums with respect to a policy of insurance on the life of that person or the spouse of that person, or on the lives of that person and the spouse of that person.

(3) The trustee is not liable to the beneficiaries of the trust or any other person for any loss sustained with respect to a contract for life insurance to which this section applies.

(4) Unless otherwise provided in the trust instrument, paragraph (1)(a) applies to any contract for life insurance on the life of a qualified person.

(5) Unless otherwise provided in the trust instrument, paragraphs (1)(b)-(f) apply if:

(a) The trust instrument, by reference to this section, makes this section applicable to contracts for life insurance held by the trust; or

(b) The trustee gives notice that this section applies to a contract for life insurance held by the trust.

1. The notice of the application of this section shall be given to the qualified beneficiaries and shall contain a copy or restatement of this section.

2. Notice given pursuant to any of the provisions of part III of this chapter to a person who represents the interests of any of the persons set forth in subparagraph 1. shall be treated as notice to the person so represented.

3. Notice shall be given in the manner provided in s. 736.0109.

4. If any person notified pursuant to this paragraph delivers a written objection to the application of this section to the trustee within 30 days after the date on which the objector received such notice, paragraphs (1)(b)-(f) shall not apply until the objection is withdrawn.

5. There shall exist a rebuttable presumption that any notice sent by United States mail is received 3 days after depositing the notice in the United States mail system with proper postage prepaid.

(6) This section does not apply to any contract for life insurance purchased from any affiliate of the trustee, or with respect to which the trustee or any affiliate of the trustee receives any commission unless the duties have been delegated to another person in accordance with s. 518.112. For purposes of this subsection, an "affiliate" is any person who controls, is controlled by, or is under common control with the trustee.

(7) Paragraph (1)(a) does not apply if the trustee applied for or accepted ownership of a contract of life insurance and the trustee had knowledge that:

(a) The benefits were not payable to a person specified in s. 627.404 when the contract of life insurance was issued; or

(b) The contract of life insurance is or was purchased with resources or guarantees directly or indirectly provided by a person who, at the time of the inception of such contract, did not have an insurable interest in the insured as defined by s. 627.404, and, at the time of the inception of such contract, there is a verbal or written arrangement, agreement, or plan with a third party to transfer ownership of the policy or policy benefits in a manner that would be in violation of state law.

(8) A trustee who performs fiduciary or advisory services related to a policy of life insurance to which subsection (1) applies shall not be compensated for performing the applicable service to which subsection (1) applies.

Section 2. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 518.112, Florida Statutes, are amended to read:

518.112 Delegation of investment functions.—

(2)

(b) The delegable investment functions under this subsection include:

1. A determination of whether the insurance contract was procured or effected in compliance with s. 627.404;

~~2.1.~~ A determination of whether any insurance contract is or remains a proper investment;

3. The investigation of the financial strength of the life insurance company;

~~4.2.~~ A determination of whether or not to exercise any policy option available under any insurance such contracts;

~~5.3.~~ A determination of whether or not to diversify such contracts relative to one another or to other assets, if any, administered by the fiduciary; or

~~6.4.~~ An inquiry about changes in the health or financial condition of the insured or insureds relative to any such contract.

(3) A fiduciary may delegate investment functions to an investment agent under subsection (1) or subsection (2), if:

(b) In the case of a trust or estate, the fiduciary has given written notice, of its intention to begin delegating investment functions under this section, to all beneficiaries, or their legal representative, eligible to receive distributions from the trust or estate within 30 days of the delegation unless such notice is waived by the eligible beneficiaries entitled to receive such notice. This notice shall thereafter, until or unless the beneficiaries eligible to receive income from the trust or distributions from the estate at the time are notified to the contrary, authorize the trustee or legal representative to

delegate investment functions pursuant to this subsection. This discretion to revoke the delegation does not imply under subsection (2) any continuing obligation to review the agent's actions.

1. Notice to beneficiaries eligible to receive distributions from the trust from the estate, or their legal representatives shall be sufficient notice to all persons who may join the eligible class of beneficiaries in the future.

2. Additionally, as used herein, legal representative includes one described in s. 731.303, without any requirement of a court order, an attorney-in-fact under a durable power of attorney sufficient to grant such authority, a legally appointed guardian, or equivalent under applicable law, any living, natural guardian of a minor child, or a guardian ad litem.

3. Written notice shall be given as provided in part III of chapter 731 as to an estate, and as provided in s. 736.0109 and part III of chapter 736 as to a trust.:

~~a. By any form of mail or by any commercial delivery service, approved for service of process by the chief judge of the judicial circuit in which the trust has its principal place of business at the date of notice, requiring a signed receipt;~~

~~b. As provided by law for service of process; or~~

~~c. By an elisor as may be provided in the Florida Rules of Civil Procedure.~~

~~Notice by mail or by approved commercial delivery service is complete on receipt of notice. Proof of notice must be by verified statement of the person mailing or sending notice, and there must be attached thereto the signed receipt or other satisfactory evidence that delivery was effected on the addressee or on the addressee's agent. Proof of notice must be maintained among the trustee's permanent records.~~

Section 3. This act shall take effect July 1, 2010.

Approved by the Governor June 1, 2010.

Filed in Office Secretary of State June 1, 2010.