

CHAPTER 2022-96

Committee Substitute for Senate Bill No. 1368

An act relating to trusts; amending s. 689.225, F.S.; revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; amending s. 736.0105, F.S.; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries under certain circumstances; amending s. 736.0109, F.S.; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; authorizing certain trust companies that are trustees to use specified methods for providing notice or sending a document; specifying when such notice or document is deemed sent; amending s. 736.0303, F.S.; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending ss. 736.04115 and 736.0412, F.S.; conforming provisions to changes made by the act; amending s. 736.0813, F.S.; providing that the terms of a trust may permit for accounting to the qualified beneficiaries only under certain circumstances; providing construction; amending s. 736.08135, F.S.; providing an alternate procedure for trust accountings for specified trustees under certain circumstances; specifying requirements and applicability; amending s. 736.08145, F.S.; clarifying the application of law governing grantor trust reimbursement; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 689.225, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

(f) As to any trust created after December 31, 2000, through June 30, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 360 years in place of “90 years” in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

(g) As to any trust created on or after July 1, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of “90 years” in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Section 2. Paragraph (s) 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:

(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 except as otherwise provided in s. 736.0813(1)(d).

Section 3. Present subsections (4), (5), and (6) of section 736.0109, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and subsection (1) and present subsection (4) of that section are amended, to read:

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, a properly directed facsimile or other electronic message, including e-mail, or posting on a secure electronic account or website in accordance with subsection (3).

(4) Notwithstanding subsection (3), a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, that is a trustee of a trust may use any permissible method for providing notice or for sending a document specified in subsection (1) or may send a properly directed e-mail that contains an attached notice or document or contains a hyperlink through which the recipient can view the notice or document as a permissible method of providing notice or sending a document. For purposes of this subsection, such notice or document sent by e-mail is deemed to have been sent if any username, password, or other specific instructions needed to access the notice or document are communicated to the recipient beforehand or contemporaneously with the sending of the e-mail message containing the notice, document, or hyperlink, or upon the request of the recipient.

~~(5)~~(4) Notice to a person under this code, or the sending of a document to a person under this code electronically ~~by electronic message~~, is complete when ~~the document is sent~~.

(a) An electronic message is presumed received on the date that the message is sent.

(b) If the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received. The sender has the burden to prove that another copy of the notice or

document was sent by electronic message or by other means authorized by this section.

Section 4. Subsection (5) of section 736.0303, Florida Statutes, is amended to read:

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:

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

Section 5. Subsection (1) of section 736.0409, Florida Statutes, is amended to read:

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 1,000 ~~21~~ years.

Section 6. Paragraph (b) of subsection (3) of section 736.04115, Florida Statutes, is amended to read:

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

(3) This section shall not apply to:

(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) and (g).

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

Section 7. Paragraph (b) of subsection (4) of section 736.0412, Florida Statutes, is amended to read:

736.0412 Nonjudicial modification of irrevocable trust.—

(4) This section shall not apply to:

(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) and (g), unless the terms of the trust expressly authorize nonjudicial modification.

Section 8. Paragraph (d) of subsection (1) 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.

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

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee. Notwithstanding s. 736.0105(2)(s) or the duties under this paragraph, if a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee of an irrevocable trust, the terms of the trust may permit for accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary. This paragraph may not be construed to prohibit a trustee that is a family trust company, licensed family trust company, or foreign licensed family trust company from voluntarily accounting to the qualified beneficiaries annually or at other times selected by such trustee.

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.

Section 9. Present subsection (3) of section 736.08135, Florida Statutes, is redesignated as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

736.08135 Trust accountings.—

(3) Notwithstanding subsections (1) and (2), if a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee of the trust, such trustee may elect, for any accounting period, to provide the qualified beneficiaries with all of the following information:

(a) A notice stating that the trustee has made an election to provide the information described in this subsection.

(b) The information required by paragraph (2)(a) and, if applicable, the information required by paragraph (2)(f).

(c) A financial statement for the trust which summarizes the information provided pursuant to paragraphs (2)(b)-(e). The financial statement must contain sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities as well as of the transactions occurring during the accounting period. A financial statement that reports a summary of the comprehensive assets and liabilities at the beginning and end of the accounting period and the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, distributions, accruals, or allowances occurring within the accounting period for each category of assets and liabilities meets the requirements of this paragraph.

For the purposes of this chapter, a financial statement that a trustee provides to a beneficiary of a trust under this subsection is deemed to be a trust accounting. Any trustee that makes the election provided in this subsection shall, upon request of any beneficiary made within the limitations period under s. 736.1008, make available the detailed information necessary for preparation of the financial statement to the beneficiary within 30 days after the date of such request, including providing copies of the requested information. A request by a beneficiary for the detailed information necessary for the preparation of the financial statement tolls the running of any applicable limitations period until the detailed information is made available to the beneficiary.

(4)(3) Subsections (1) and (2) govern the form and content of all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018. The election provided in subsection (3) for trusts for which a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee is available for any accounting periods beginning on or after July 1, 2022. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 10. Subsection (2) of section 736.08145, Florida Statutes, is amended to read:

736.08145 Grantor trust reimbursement.—

(2) This section applies to all trusts that are governed by the laws of this state or that have a principal place of administration within this state, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any

similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal Revenue Code.

Section 11. This act shall take effect July 1, 2022.

Approved by the Governor May 6, 2022.

Filed in Office Secretary of State May 6, 2022.