

CHAPTER 2025-159

Committee Substitute for Committee Substitute for Senate Bill No. 262

An act relating to trusts; amending s. 736.04117, F.S.; revising the definition of the term “authorized trustee”; revising how an authorized trustee may exercise the power to invade principal as an authorized trustee administering a trust; providing that notice of such exercise by an authorized trustee is not a trust disclosure document; providing that a trust disclosure document may not commence a limitations period unless such trust disclosure document is provided after the effective date of the exercise of the power to invade principal by an authorized trustee; providing applicability; amending s. 736.08125, F.S.; providing an exception with regard to protection of successor trustees; creating s. 736.10085, F.S.; barring certain actions initiated by specified parties against prior trustees; creating s. 736.1110, F.S.; providing that property devised to or from a revocable trust which is devised, given, or distributed to a donee by a settlor during the settlor’s lifetime is treated as a satisfaction of devise to that donee if certain criteria are met; providing that property distributed or given to a devisee during a settlor’s lifetime is to be valued at the time the devisee came into possession or enjoyment of the property, or at the time of the death of the settlor, whichever occurs first; providing applicability; amending s. 736.1502, F.S.; revising the definitions of the terms “community property” and “community property trust”; amending s. 736.151, F.S.; providing that homestead property transferred by one or both settlor spouses to a community property trust will not be treated as a change of ownership for the purposes of reassessing the property; providing that such transfer qualifies as a change or transfer of legal or equitable title between spouses; providing construction and retroactive application; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (a) of subsection (2), subsection (3), paragraph (a) of subsection (4), and paragraph (d) of subsection (8) of section 736.04117, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

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

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

(b) “Authorized trustee” means a trustee, other than the settlor or a beneficiary, who has the power to invade the principal of a trust. For the purposes of this section, an authorized trustee will not be considered a settlor of a second trust, even if the authorized trustee created the trust instrument governing the second trust or made a distribution of assets from the first trust to the second trust. In determining settlor intent with respect

to a second trust or a modification of the first trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized trustee may be considered.

(2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.

(a) Unless a trust instrument expressly provides otherwise, an authorized trustee who has absolute power under the terms of the trust to invade its principal, referred to in this section as the “first trust,” to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the trust subject to such power in favor of a trustee of one or more other trusts, whether created under the same trust instrument as the first trust or a different trust instrument, including a trust instrument created for the purposes of exercising the power granted by this section, each referred to in this section as the “second trust,” for the current benefit of one or more of such beneficiaries only if:

1. The beneficiaries of the second trust include only beneficiaries of the first trust; and
2. The second trust does not reduce any vested interest.

(3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—Unless the trust instrument expressly provides otherwise, an authorized trustee who has a power, other than an absolute power, under the terms of a first trust to invade principal to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the first trust subject to such power in favor of a trustee of one or more second trusts. If the authorized trustee exercises such power:

(a) The second trusts, in the aggregate, must ~~shall~~ grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(b) If the first trust grants a power of appointment to a beneficiary of the first trust, the second trust must ~~shall~~ grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees must ~~shall~~ be the same as in the first trust.

(c) If the first trust does not grant a power of appointment to a beneficiary of the first trust, the second trust may not grant a power of appointment in the second trust to such beneficiary.

(d) Notwithstanding paragraphs (a), (b), and (c), the term of the second trust may extend beyond the term of the first trust, and, for any period after

the first trust would have otherwise terminated, in whole or in part, under the provisions of the first trust, the trust instrument of the second trust may, with respect to property subject to such extended term:

1. Include language providing the trustee with the absolute power to invade the principal of the second trust during such extended term; and

2. Create a power of appointment, if the power holder is a current beneficiary of the first trust, or expand the class of permissible appointees in favor of which a power of appointment may be exercised.

(4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS TRUST.—

(a) Notwithstanding subsections (2) and (3), unless the trust instrument expressly provides otherwise, an authorized trustee who has the power under the terms of a first trust to invade the principal of the first trust to make current distributions to or for the benefit of a beneficiary with a disability may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the first trust in favor of a trustee of a second trust that is a supplemental needs trust if:

1. The supplemental needs trust benefits the beneficiary with a disability;

2. The beneficiaries of the second trust include only beneficiaries of the first trust; and

3. The authorized trustee determines that the exercise of such power will further the purposes of the first trust.

(8) NOTICE.—

(d) The authorized trustee's notice under this subsection is not a trust disclosure document as defined in s. 736.1008(4) and does not limit the right of any beneficiary to object to the exercise of the authorized trustee's power to invade principal except as otherwise provided in other applicable provisions of this code. With respect to the exercise of the authorized trustee's power to invade principal, a trust disclosure document will not commence a limitations period unless the trust disclosure document is provided after the effective date of the exercise of such power to invade principal by the authorized trustee.

(12) APPLICATION.—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.

Section 2. Subsection (3) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(3) Except as provided in s. 736.10085, nothing in this section does not affect affects any liability of the prior trustee or the right of the successor trustee or any beneficiary to pursue an action or claim against the prior trustee.

Section 3. Section 736.10085, Florida Statutes, is created to read:

736.10085 Claims against former trustees.—An action or claim by a successor trustee or other person acting on behalf of the trust against a prior trustee is barred to the same extent that the action or claim would be barred if brought by the beneficiary whose interests are represented by the successor trustee or other person acting on behalf of the trust.

Section 4. Section 736.1110, Florida Statutes, is created to read:

736.1110 Ademption by satisfaction.—

(1) Property devised to or from a revocable trust which a settlor gave to a donee during the settlor's lifetime or which is distributed from a revocable trust to a donee during the settlor's lifetime is to be treated as a satisfaction of a devise to that donee, in whole or in part, upon the settlor's death, if any of the following circumstances applies:

(a) The trust instrument provides for the deduction of the lifetime gift or distribution.

(b) The settlor or the trustee of the revocable trust declares in a contemporaneous writing that the gift or distribution is to be deducted from the devise or is in satisfaction of the devise.

(c) The devisee acknowledges in writing that the gift or distribution is in satisfaction of the devise.

(2) For purposes of part satisfaction, property distributed or given during the settlor's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the settlor, whichever occurs first.

(3) This section applies to revocable trusts that become irrevocable on or after July 1, 2025.

Section 5. Subsections (1) and (2) of section 736.1502, Florida Statutes, are amended to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the

appreciation of and income from such property are ~~shall be deemed to be~~ community property for purposes of general law.

(2) “Community property trust” means an express trust that complies with s. 736.1503 and is created, amended, restated, or modified on or after July 1, 2021.

Section 6. Subsection (3) is added to section 736.151, Florida Statutes, to read:

736.151 Homestead property.—

(3) A transfer of homestead property by one or both of the settlor spouses to a community property trust will not be treated as a change of ownership for purposes of reassessing the property and instead qualifies as a change or transfer of legal or equitable title between spouses as described in s. 193.155(3)(a)2.

Section 7. The amendments made by this act to ss. 736.04117, 736.1502, and 736.151, Florida Statutes, are remedial and apply to trusts created before, on, or after the effective date of this act.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2025.

Filed in Office Secretary of State June 20, 2025.