

## Committee on Judiciary

### **CS/CS/SB 262 — Trusts**

by Community Affairs Committee; Judiciary Committee; and Senator Berman

The bill amends the Florida Trust Code. The Code governs the creation of trusts and the authority and responsibilities of trustees to manage property held in trust for the benefit of others.

#### *Trust Decanting*

The bill clarifies existing law relating to trust decanting, which refers to pouring trust assets into a new trust. Trust decanting is often appropriate due to changes in circumstances, administrative ease, or changes in tax laws.

Under the trust decanting provisions of the bill, a trustee is expressly authorized to modify the terms of a first trust to create or fund a second trust as a means of making distributions to beneficiaries. Additionally, the bill expressly states that a trustee who is authorized to invade the principal of a trust to create or fund a second trust is not considered to be the settlor of the second trust. This change ensures that a trustee will not be disqualified from serving as a trustee of a second trust as the result of having created or funded the second trust from the assets of the first trust.

#### *A Former Trustee’s Liability and A Successor Trustee’s Responsibilities*

With regard to a former trustee’s liability and successor trustees’ responsibilities, the bill clarifies that a person in a fiduciary relationship to a beneficiary may not bring an action on behalf of a beneficiary if the beneficiary is barred from bringing the claim or action.

#### *Ademption by Satisfaction*

The bill adopts nearly identical provisions contained in the Florida Probate Code to clarify when an “ademption by satisfaction” occurs with assets from a trust. The phrase “ademption by satisfaction” as used in the Florida Probate Code refers to the cancellation of a gift or distribution of an asset because the asset has already been given to the intended recipient. Often, property is missing from a trust at the settlor’s death because the settlor gave the property to someone during the settlor’s lifetime or because the property was distributed to someone from a revocable trust during the settlor’s lifetime. Under the bill, these gifts from a trust will be considered satisfied or adeemed only if a written statement is made, either in the terms of the trust, in a contemporaneous statement that the gift is to be deducted from the devise, or when the recipient acknowledges in writing that the gift has been satisfied.

#### *Community Property and Community Property Trust*

The definitions of “community property” and “community property trust” are amended by the bill to clarify that transferring homestead property into a community trust is not a change of

ownership for the purpose of reassessing the value of homestead property. This clarification will prevent property appraisers from reassessing the value of a home which would likely result in higher property taxes.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect upon becoming law.

*Vote: Senate 36-0; House 114-0*