

1 A bill to be entitled
2 An act relating to probate and trusts; amending
3 s. 731.303, F.S.; clarifying existing law
4 regarding representation in the administration
5 of a trust; providing for retroactive
6 application; amending s. 732.2025, F.S.;
7 redefining the term "qualifying special needs
8 trust" established for a surviving spouse;
9 amending s. 732.2075, F.S.; revising provisions
10 governing sources from which the elective share
11 is payable; amending s. 733.107, F.S.;
12 clarifying the circumstances which shift the
13 burden of proof in certain proceedings
14 contesting the validity of a will; amending s.
15 733.702, F.S.; clarifying the limitation on the
16 presentation of claims; creating s. 737.115,
17 F.S.; requiring certain trusts to contain a
18 specified notice; creating s. 737.116, F.S.;
19 providing for the establishment of trusts for
20 the care of an animal; creating s. 737.209,
21 F.S.; codifying existing law regarding improper
22 distribution in the administration of a trust;
23 amending s. 737.303, F.S.; making conforming
24 amendments relating to the duty to inform and
25 with respect to trust accounting; creating s.
26 737.3035, F.S.; codifying trust accounting
27 principles; amending s. 737.307, F.S.;
28 requiring notice of statute of limitations to
29 trust beneficiaries; amending s. 660.46, F.S.;
30 making conforming amendments relating to trust
31 accounts and limitations period against trust

1 entities; providing for application; providing
2 an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 731.303, Florida Statutes, is
7 amended to read:

8 731.303 Representation.--In the administration of or
9 in proceedings involving estates of decedents or trusts, the
10 following apply:

11 (1) Persons are bound by orders binding others in the
12 following cases:

13 (a) Orders binding the sole holder or all coholders of
14 a power of revocation or a general, special, or limited power
15 of appointment, including one in the form of a power of
16 amendment or revocation to the extent that the power has not
17 become unexercisable in fact, bind all persons to the extent
18 that their interests, as persons who may take by virtue of the
19 exercise or nonexercise of the power, are subject to the
20 power.

21 (b) To the extent there is no conflict of interest
22 between them or among the persons represented:

23 1. Orders binding a guardian of the property bind the
24 ward.

25 2. Orders binding a trustee bind beneficiaries of the
26 trust in proceedings to probate a will, in establishing or
27 adding to a trust, in reviewing the acts or accounts of a
28 prior fiduciary, and in proceedings involving creditors or
29 other third parties.

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1 3. Orders binding a personal representative bind
2 persons interested in the undistributed assets of a decedent's
3 estate, in actions or proceedings by or against the estate.

4 (c) An unborn or unascertained person, or a minor or
5 any other person under a legal disability, who is not
6 otherwise represented is bound by an order to the extent that
7 person's interest is represented by another party having the
8 same or greater quality of interest in the proceeding.

9 (2) Orders binding a guardian of the person shall not
10 bind the ward.

11 (3) In judicial proceedings involving the
12 administration of estates or trusts,notice is required as
13 follows:

14 (a) Notice as prescribed by the Florida Probate Rules
15 shall be given to every interested person, or to one who can
16 bind the interested person as described in paragraph (1)(a) or
17 paragraph (1)(b). Notice may be given both to the interested
18 person and to another who can bind him or her.

19 (b) Notice is given to unborn or unascertained persons
20 who are not represented pursuant to paragraph (1)(a) or
21 paragraph (1)(b) by giving notice to all known persons whose
22 interests in the proceedings are the same as, or of a greater
23 quality than, those of the unborn or unascertained persons.

24 (4) If the court determines that representation of the
25 interest would otherwise be inadequate, the court may, at any
26 time, appoint a guardian ad litem to represent the interests
27 of an incapacitated person, an unborn or unascertained person,
28 a minor or any other person otherwise under a legal
29 disability, or a person whose identity or address is unknown.
30 If not precluded by conflict of interest, a guardian ad litem
31 may be appointed to represent several persons or interests.

1 (5) When a sole holder or coholder ~~Agreements,~~
2 ~~waivers, consents, approvals, accounts, or other statements~~
3 ~~that fully disclose the matters that are the subject of the~~
4 ~~accounts or statements and that bind the sole holder or all~~
5 ~~coholders~~ of a general, special, or limited power of
6 appointment, including an exercisable ~~a~~ power of amendment or
7 revocation over property in an estate or trust, is bound by:
8 (a) Agreements, waivers, consents, or approvals; or
9 (b) Accounts, trust accountings, or other written
10 reports that adequately disclose matters set forth therein to
11 ~~the extent that the power has not become unexercisable in~~
12 ~~fact, bind all persons to the extent that their interests,~~
13
14 then all ~~as~~ persons who may take by virtue of, and whose
15 interests are subject to, the exercise or nonexercise of the
16 power, are also bound, but only to the extent of their
17 interests subject to the power.

18 Section 2. Subsection (8) of section 732.2025, Florida
19 Statutes, is amended to read:

20 732.2025 Definitions.--As used in ss.
21 732.2025-732.2155, the term:

22 (8) "Qualifying special needs trust" or "supplemental
23 needs trust" means a trust established for an ill or ~~a~~
24 disabled surviving spouse with court approval before or after
25 a decedent's death, if, commencing on the decedent's death:

26 (a) The income and principal are distributable to or
27 for the benefit of the spouse for life in the discretion of
28 one or more trustees less than half of whom are ineligible
29 family trustees. For purposes of this paragraph, ineligible
30 family trustees include the decedent's grandparents and any
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1 descendants of the decedent's grandparents who are not also
2 descendants of the surviving spouse; and

3 (b) During the spouse's life, no person other than the
4 spouse has the power to distribute income or principal to
5 anyone other than the spouse.

6
7 The requirement for court approval shall not apply if the
8 aggregate value of all property in all qualifying special
9 needs trusts for the spouse is less than \$100,000. For
10 purposes of this subsection, value is determined on the
11 "applicable valuation date" as defined in s. 732.2095(1)(a).

12 Section 3. Paragraph (e) of subsection (1) of section
13 732.2075, Florida Statutes, is amended to read:

14 732.2075 Sources from which elective share payable;
15 abatement.--

16 (1) Unless otherwise provided in the decedent's will
17 or, in the absence of a provision in the decedent's will, in a
18 trust referred to in the decedent's will, the following are
19 applied first to satisfy the elective share:

20 (e) Property interests included in the elective estate
21 that pass or have passed to or for the benefit of the
22 surviving spouse, including interests that are contingent upon
23 making the election, but only to the extent that such
24 contingent interests do not diminish other property interests
25 that would be applied to satisfy the elective share in the
26 absence of the contingent interests.

27 Section 4. Section 733.107, Florida Statutes, is
28 amended to read:

29 733.107 Burden of proof in contests; presumption of
30 undue influence.--

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1 (1) In all proceedings contesting the validity of a
2 will, the burden shall be upon the proponent of the will to
3 establish prima facie its formal execution and attestation.
4 Thereafter, the contestant shall have the burden of
5 establishing the grounds on which the probate of the will is
6 opposed or revocation is sought.

7 (2) The presumption of undue influence implements
8 public policy against abuse of fiduciary or confidential
9 relationships and is therefore a presumption shifting the
10 burden of proof under ss. 90.301-90.304.

11 Section 5. Subsection (1) of section 733.702, Florida
12 Statutes, is amended to read:

13 733.702 Limitations on presentation of claims.--

14 (1) If not barred by s. 733.710, no claim or demand
15 against the decedent's estate that arose before the death of
16 the decedent, including claims of the state and any of its
17 political subdivisions, even if the claims are unmaturred,
18 contingent, or unliquidated; no claim for funeral or burial
19 expenses; no claim for personal property in the possession of
20 the personal representative; and no claim for damages,
21 including, but not limited to, an action founded on fraud or
22 another wrongful act or omission of the decedent, is binding
23 on the estate, on the personal representative, or on any
24 beneficiary unless filed in the probate proceeding on or
25 before ~~within~~ the later of the date that is 3 months after the
26 time of the first publication of the notice to creditors or,
27 as to any creditor required to be served with a copy of the
28 notice to creditors, 30 days after the date of service on the
29 creditor, even though the personal representative has
30 recognized the claim or demand by paying a part of it or
31 interest on it or otherwise. The personal representative may

1 settle in full any claim without the necessity of the claim
2 being filed when the settlement has been approved by the
3 interested persons.

4 Section 6. Section 737.115, Florida Statutes, is
5 created to read:

6 737.115 Notice of trustee duties.--

7 (1) A trust described in s. 733.707(3) must contain a
8 notice that the trustee may have duties and responsibilities
9 in addition to those described in the instrument creating the
10 trust. The notice may, but need not, read as follows:

11
12 The trustee of a trust may have duties and
13 responsibilities in addition to those described
14 in the instrument creating the trust. If you
15 have questions, you should obtain legal advice.

16
17 (2) The absence of the notice described in this
18 section in the trust instrument shall not affect the validity
19 of the trust. A trustee is not relieved of any duty if the
20 notice is not contained in the trust instrument. No person is
21 liable for failure to include the notice in the trust
22 instrument.

23 (3) This section applies to all trusts described in s.
24 733.707(3) and amendments to those trusts executed on or after
25 January 1, 2003.

26 Section 7. Section 737.116, Florida Statutes, is
27 created to read:

28 737.116 Trust for care of animal.--

29 (1) A trust may be created to provide for the care of
30 an animal alive during the settlor's lifetime. The trust
31 terminates upon the death of the animal or, if the trust was

1 created to provide for the care of more than one animal alive
2 during the settlor's lifetime, upon the death of the last
3 surviving animal.

4 (2) Except as provided in this section, the law of
5 this state regarding the creation and administration of
6 express trusts applies to a trust for the care of an animal.

7 (3) A trust authorized by this section may be enforced
8 by a person appointed in the terms of the trust or, if no
9 person is so appointed, by a person appointed by the court. A
10 person having an interest in the welfare of the animal may
11 request the court to appoint a person to enforce the trust or
12 to remove a person appointed. The appointed person shall have
13 the rights of a trust beneficiary for the purpose of enforcing
14 the trust, including receiving accountings, notices, and other
15 information from the trustee and providing consents.

16 (4) Property of a trust authorized by this section may
17 be applied only to its intended use, except to the extent the
18 court determines that the value of the trust property exceeds
19 the amount required for the intended use. Property not
20 required for the intended use, including the trust property
21 remaining upon its termination, shall be distributed in the
22 following order of priority:

23 (a) As directed by the terms of the trust;

24 (b) To the settlor, if then living;

25 (c) Pursuant to the residuary clause of the settlor's
26 will if the trust for the animal was created in a preresiduary
27 clause in the settlor's will;

28 (d) If the settlor is deceased, pursuant to the
29 residuary provisions of the inter vivos trust if the trust for
30 the animal was created in a preresiduary clause in the trust
31 instrument; or

1 (e) To the settlor's heirs.

2 (5) This section applies to trusts created on or after
3 January 1, 2003.

4 Section 8. Section 737.209, Florida Statutes, is
5 created to read:

6 737.209 Improper distribution or payment; liability of
7 distributee.--A distributee who was paid improperly must
8 return the assets or funds received and the income from those
9 assets or interest on the funds since distribution or payment,
10 unless the distribution or payment cannot be questioned
11 because of adjudication, estoppel, or limitations. If the
12 distributee does not have the property, its value at the date
13 of disposition, income thereon, and gain received by the
14 distributee must be returned.

15 Section 9. Subsection (4) of section 737.303, Florida
16 Statutes, is amended, and subsection (5) is added to said
17 section, to read:

18 737.303 Duty to inform and account to
19 beneficiaries.--The trustee shall keep the beneficiaries of
20 the trust reasonably informed of the trust and its
21 administration. The trustee's duty to inform and account
22 includes, but is not limited to, the following:

23 (4)(a) A beneficiary is entitled to a ~~statement of the~~
24 ~~accounts of the~~ trust accounting, as set forth in s. 737.3035,
25 annually and upon termination of the trust or upon change of
26 the trustee except as provided under paragraph (c).

27 (b) For purposes of this section, the term
28 "beneficiary" means:

29 1. All current income or principal beneficiaries,
30 whether discretionary or mandatory; and

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1 2. All reasonably ascertainable remainder
2 beneficiaries who would take if all income interests
3 immediately terminated.

4 (c) In the case of a trust described in s. 733.707(3),
5 during the grantor's lifetime, the trustee's duties under this
6 section extend only to the grantor or the legal representative
7 of the grantor.

8 (d) A beneficiary or the beneficiary's representative,
9 as defined in s. 731.303, may waive, in writing, the trustee's
10 duty to account under paragraph (a).

11 (e) All rights provided a beneficiary under this
12 section may be asserted by a legal representative or natural
13 guardian of the beneficiary. Notice under subsection (1) and a
14 trust accounting ~~statement of accounts~~ under paragraph (a)
15 provided to a representative of the beneficiary as defined in
16 s. 731.303 shall bind the beneficiary, and the trustee shall
17 not be required to provide such notice or trust accounting
18 ~~statement of accounts~~ to any beneficiary who would be bound by
19 an order binding on a representative of the beneficiary under
20 s. 731.303, if such notice or trust accounting ~~statement of~~
21 ~~accounts~~, respectively, is provided to that representative.

22 (5) This section applies to trust accountings rendered
23 for accounting periods beginning on or after January 1, 2003.

24 Section 10. Section 737.3035, Florida Statutes, is
25 created to read:

26 737.3035 Trust accountings.--

27 (1) A trust accounting must be a reasonably
28 understandable report from the date of the last accounting or,
29 if none, from the date upon which the trustee became
30 accountable, which adequately discloses the information
31 required in subsection (2).

1 (2)(a) The accounting must begin with a statement
2 identifying the trust, the trustee furnishing the accounting,
3 and the time period covered by the accounting.

4 (b) The accounting must show all cash and property
5 transactions and all significant transactions affecting
6 administration during the accounting period, including
7 compensation paid to the trustee and the trustee's agents.
8 Gains and losses realized during the accounting period and all
9 receipts and disbursements must be shown.

10 (c) The accounting must, to the extent feasible,
11 identify and value trust assets on hand at the close of the
12 accounting period. For each asset or class of assets
13 reasonably capable of valuation, the accounting shall contain
14 two values: the asset acquisition value or carrying value and
15 the estimated current value. The accounting must identify each
16 known noncontingent liability with an estimated current amount
17 of the liability if known.

18 (d) To the extent feasible, the accounting must show
19 significant transactions that do not affect the amount for
20 which the trustee is accountable, including name changes in
21 investment holdings, adjustments to carrying value, a change
22 of custodial institutions, and stock splits.

23 (e) The accounting must reflect the allocation of
24 receipts, disbursements, accruals, or allowances between
25 income and principal when the allocation affects the interest
26 of any beneficiary of the trust.

27 (3) This section applies to all trust accountings
28 rendered for any accounting periods beginning on or after
29 January 1, 2003.

30 Section 11. Section 737.307, Florida Statutes, is
31 amended to read:

1 737.307 Limitations on proceedings against trustees
2 after beneficiary receives trust disclosure documents
3 account.--

4 (1) Unless previously barred by adjudication, consent,
5 or limitations, an action against a trustee for breach of
6 trust is barred for any beneficiary who has received a trust
7 disclosure document adequately final, annual, or periodic
8 account or other statement fully disclosing the matter unless
9 a proceeding to assert the claim is commenced within 6 months
10 after receipt from the trustee of the trust disclosure
11 document or the limitation notice that applies to the trust
12 disclosure document, whichever is received later. All claims
13 against a trustee who has issued a trust disclosure document
14 adequately disclosing a matter but who has not delivered a
15 limitation notice that applies to that trust disclosure
16 document are barred as provided in chapter 95 as to the
17 matters disclosed in the trust disclosure document of the
18 final, annual, or periodic account or statement. In any
19 event, and notwithstanding lack of adequate full disclosure or
20 delivery of a limitation notice, all claims against a trustee
21 who has issued a final trust accounting account or statement
22 received by the beneficiary and has informed the beneficiary
23 of the location and availability of records for his or her
24 examination are barred as provided in chapter 95.

25 (2) As used in this section, the term "trust
26 disclosure document" means a trust accounting as described in
27 s. 737.3035 or any other written report of the trustee. A
28 trust disclosure document adequately discloses a matter if it
29 provides sufficient information so that a beneficiary knows of
30 a claim or reasonably should have inquired into the existence
31 of a claim with respect to that matter. An accounting that

1 adequately discloses the information required by and that
2 substantially complies with the standards set forth in s.
3 737.3035 is a trust accounting under this section.

4 (3) As used in this section, the term "limitation
5 notice" means a written statement of the trustee that an
6 action by a beneficiary against the trustee for breach of
7 trust based on any matter adequately disclosed in a trust
8 disclosure document may be barred unless the action is
9 commenced within 6 months after receipt of the trust
10 disclosure document or receipt of a limitation notice that
11 applies to that trust disclosure document, whichever is later.

12 (a) A limitation notice may be contained as a part of
13 the trust disclosure document, may be accompanied concurrently
14 by the trust disclosure document, or may be delivered
15 separately from the trust disclosure document.

16 (b) A limitation notice may, but is not required to,
17 be in the following form: "An action for breach of trust based
18 on matters disclosed in a trust accounting or other written
19 report of the trustee may be subject to a 6-month statute of
20 limitations from the receipt of the trust accounting or other
21 written report. If you have questions, please consult your
22 attorney."

23 (c) For purposes of this section, a limitation notice
24 applies to a trust disclosure document when the limitation
25 notice is:

26 1. Contained as a part of the trust disclosure
27 document;

28 2. Accompanied concurrently by the trust disclosure
29 document or delivered separately within 10 days after the
30 delivery of the trust disclosure document;

31

1 3. Contained as a part of another trust disclosure
2 document received within 1 year prior to the receipt of the
3 latter trust disclosure document;

4 4. Accompanied concurrently by another trust
5 disclosure document that was received within 1 year prior to
6 the receipt of the latter trust disclosure document or that
7 was delivered separately within 10 days after the earlier
8 trust disclosure document to the beneficiary; or

9 5. Received after the trust disclosure document, but
10 only if the limitation notice references that trust disclosure
11 document and:

12 a. Offers to provide to the beneficiary upon request
13 another copy of that trust disclosure document if it was
14 received by the beneficiary within 1 year prior to receipt of
15 the limitation notice; or

16 b. Is accompanied by another copy of that trust
17 disclosure document if the trust disclosure document was
18 received by the beneficiary 1 year or more prior to the
19 receipt of the limitation notice.

20 (d) A limitation notice is not delivered separately if
21 it is accompanied by another written communication other than
22 a written communication which refers only to the limitation
23 notice.

24 (4) A beneficiary has received a trust disclosure
25 document or a limitation notice ~~final, annual, or periodic~~
26 ~~account or statement~~ if, being an adult, it is received by the
27 beneficiary or if, being a minor, disabled person, or person
28 who may take by virtue of the exercise or nonexercise of a
29 power of appointment, it is received by the beneficiary's
30 representative as defined ~~described~~ in s. 731.303.

31

1 (5) This section applies to trust accountings for
2 accounting periods beginning on or after January 1, 2003, and
3 to written reports, other than trust accountings, received by
4 a beneficiary on or after January 1, 2003.

5 Section 12. Section 660.46, Florida Statutes, is
6 amended to read:

7 660.46 Substitution of fiduciaries.--

8 (1) The provisions of this section shall apply to the
9 transfer of fiduciary accounts by substitution, and for those
10 purposes these provisions shall constitute alternative
11 procedures to those provided or required by any other
12 provisions of law relating to the transfer of fiduciary
13 accounts or the substitution of persons acting or who are to
14 act in a fiduciary capacity. In this section, and only for
15 its purposes:

16 (a) "Limitation notice" has the meaning ascribed in s.
17 737.307(3).

18 (b)~~(a)~~ "Original fiduciary" means any trust company or
19 trust department which, at the time of the initiation of the
20 proceedings provided for in this section, holds or has been
21 named or otherwise designated to hold a fiduciary capacity,
22 alone or with others, with respect to any fiduciary account
23 and which proposes in the proceedings provided for in this
24 section to terminate its fiduciary capacity with respect to
25 such fiduciary account by the substitution of a proposed
26 substitute fiduciary.

27 (c)~~(b)~~ "Proposed substitute fiduciary" means any trust
28 company or trust department qualified under the laws of this
29 state to act in the fiduciary capacity to which it is proposed
30 in said proceedings to be substituted in the place and stead
31 of the original fiduciary.

1 (d) "Trust accounting" has the meaning ascribed in s.
2 737.3035.

3 (e) "Trust disclosure document" has the meaning
4 ascribed in s. 737.307(2).

5 (2) Any original fiduciary and any proposed substitute
6 fiduciary may, with respect to any fiduciary account or
7 accounts which they shall mutually select, initiate
8 proceedings by joining in the filing of a petition in the
9 circuit court, requesting the substitution of the proposed
10 substitute fiduciary for the original fiduciary as to such
11 fiduciary account or accounts. The petition may be filed in
12 the county in which the main office of the original fiduciary
13 is located and, except to the extent inconsistent with the
14 provisions of this section, shall be governed by the Florida
15 Rules of Civil Procedure; however, if any fiduciary account is
16 then the subject of a proceeding in a court in this state
17 pursuant to the Florida Probate Code, the Florida Guardianship
18 Law, chapter 737, or chapter 747, the petition relating to
19 such fiduciary account shall be filed in that proceeding and
20 shall be governed by the procedural or other relevant rules
21 applicable to such proceeding except to the extent
22 inconsistent with the provisions of this section.

23 (3) Unless a waiver or consent shall be filed in the
24 proceedings as provided in subsection (4), the provisions of
25 s. 731.301(1) and (2) shall apply with respect to notice of
26 the proceedings to all persons who are then cofiduciaries with
27 the original fiduciary, other than a person joining as a
28 petitioner in the proceedings; to all persons named in the
29 governing instrument as substitutes or successors to the
30 fiduciary capacity of the original fiduciary; to the persons
31 then living who are entitled under the governing instrument to

1 appoint a substitute or successor to act in the fiduciary
2 capacity of the original fiduciary; to all vested
3 beneficiaries of the fiduciary account; and to all then-living
4 originators of the governing instrument. Unless a waiver or
5 consent shall be filed in the proceedings as provided in
6 subsection (4), the provisions of s. 731.301 shall apply with
7 respect to notice to all contingent beneficiaries of the
8 fiduciary account. Only the persons or classes of persons
9 described in the foregoing provisions of this subsection shall
10 be deemed to be interested persons for the purposes of this
11 section and the proceedings and notices provided for in this
12 section; and the provisions of ss. 731.301(3) and 731.303(3),
13 ~~and~~ (4), and (5), relating to notice requirements, the effect
14 of notice, and representation of interests, shall apply to the
15 proceedings provided for in this section.

16 (4) Any interested person, including a guardian ad
17 litem, administrator ad litem, guardian of the property,
18 personal representative, trustee, or other fiduciary, may
19 waive any right of notice and may consent to any action or
20 proceeding which may be permitted by this section. Any such
21 waiver or consent must be filed in the proceedings and may be
22 filed at any time, and the notice requirements of this section
23 shall not apply to any person who files any such waiver or
24 consent.

25 (5) If no answer which constitutes an objection to the
26 petition or the relief requested therein, or which otherwise
27 requires a hearing, is served on the petitioners and filed
28 with the court in which the proceeding is pending by any
29 interested person or class of persons to whom notice has been
30 given as provided in subsection (3), within 30 days from the
31 service of such notice, the petition shall be considered ex

1 parte as to such interested person or class of persons. If an
2 answer which constitutes an objection to the petition or the
3 relief requested therein, or which otherwise requires a
4 hearing, is timely served and filed by any interested person
5 or class of persons, a hearing shall be set and reasonable
6 notice shall be given. The court, upon consideration of the
7 petition and the interests of the interested persons, shall
8 either grant or deny the relief requested by the petition;
9 and, if the relief is granted, the court shall order the
10 proposed substitute fiduciary to be substituted in the place
11 and stead of the original fiduciary, in the fiduciary capacity
12 theretofore held by the original fiduciary, effective on such
13 date as shall be specified in the court order which shall not
14 be more than 30 days from the date of the entry of such order
15 unless a longer period, not exceeding 90 days from the date of
16 the entry of such order, shall be requested by the
17 petitioners. The date so specified may be referred to in this
18 section as the effective date of the order for substitution.
19 The court shall order the requested substitution unless it
20 determines that such substitution would constitute or create a
21 material detriment to the estate, trust, or other fiduciary
22 account or to the interests of the beneficiaries thereof.

23 (6) All court costs and the fees of guardians ad litem
24 arising in connection with any proceeding hereunder shall be
25 paid by the petitioners and shall not be charged to any
26 fiduciary account.

27 (7) On the effective date of the order for
28 substitution, the original fiduciary shall transfer and
29 deliver, to the trust company or trust department so
30 substituted by the court order for substitution, each
31 fiduciary account with respect to which the order for

1 substitution is applicable, together with all documents and
2 records pertaining thereto and all other information in the
3 possession of the original fiduciary which may be necessary
4 for the proper continuation of the fiduciary functions; and
5 thereupon the trust company or trust department so substituted
6 shall hold the fiduciary capacity previously held by the
7 original fiduciary and shall have all the rights, powers, and
8 duties theretofore held or exercisable by the original
9 fiduciary by virtue of its former fiduciary capacity, but the
10 trust company or trust department so substituted shall not
11 exercise any right or power which, by the governing
12 instrument, is expressly made personal to the original
13 fiduciary. The proceedings in which the order for
14 substitution was entered shall not be finally terminated until
15 settlement of the final account of the original fiduciary
16 pursuant to the provisions of subsection (8).

17 (8) Within 30 days after the effective date of an
18 order for substitution entered hereunder, the original
19 fiduciary shall file a final trust accounting ~~account~~ with the
20 court and shall send a copy thereof to each interested person
21 who does not file a waiver or consent, together with a notice
22 of the filing of the final trust accounting ~~account~~. The trust
23 company or trust department substituted for the original
24 fiduciary by the court order for substitution shall be deemed
25 to be an interested party for the purposes of this subsection.
26 Objections to a final trust accounting ~~account~~ may be filed by
27 any interested party who has not filed a waiver or consent,
28 and, to be considered by the court, any such objections must
29 be filed with the court and served on the original fiduciary
30 within 60 days after a copy of the final trust accounting
31 ~~account~~ and notice of the filing of the final trust accounting

1 ~~account~~ have been sent to such interested person. Objections
2 shall be tried and determined by the court upon the
3 application of the original fiduciary or any interested person
4 who has not filed a waiver or consent. Upon expiration of the
5 time for filing objections if no objections have been timely
6 filed, or at such earlier time as waivers or consents have
7 been filed by all interested persons, or, if objections have
8 been timely filed by an interested person entitled to do so,
9 then upon the hearing on any such objections, the court shall
10 enter an appropriate order on such final trust accounting
11 ~~account~~ and on all unapproved annual or other trust
12 accountings ~~accounts~~ previously filed. If consents to a final
13 trust accounting ~~account~~ are filed with the court by all
14 interested persons to whom a copy of the final trust
15 accounting ~~account~~ is required hereunder to be sent, the court
16 shall enter an order approving such trust accounting ~~account~~
17 and all unapproved annual or other trust accountings ~~accounts~~
18 previously filed.

19 (9) Unless previously or otherwise barred by
20 adjudication, waiver, consent, limitation, or the ~~foregoing~~
21 provisions of ~~this~~ subsection(8), an action for breach of
22 trust or breach of fiduciary duties or responsibilities
23 against an original fiduciary in whose place and stead another
24 trust company or trust department has been substituted
25 pursuant to the provisions of this section is barred for any
26 beneficiary who has received a trust disclosure document
27 ~~adequately final, annual or periodic account or other~~
28 ~~statement~~ fully disclosing the matter unless a proceeding to
29 assert the claim is commenced within 6 months after receipt of
30 the trust disclosure document or the limitation notice that
31 applies to the trust disclosure document, whichever is

1 received later ~~final, annual or periodic account or statement.~~
2 In any event, and notwithstanding lack of adequate full
3 disclosure, all claims against such original fiduciary which
4 has issued a final trust disclosure document ~~account or~~
5 ~~statement received~~ by the beneficiary and has informed the
6 beneficiary of the location and availability of records for
7 his or her examination are barred as provided in chapter 95.
8 Subsections (2) and (3) of s. 737.307 apply to this
9 subsection.

10 (10) A beneficiary has received a final trust
11 disclosure document or a limitation notice ~~account or~~
12 ~~statement~~ if, when the beneficiary is an adult, it is received
13 by him or her or if, when the beneficiary is a minor or a
14 disabled person, it is received by his or her representative
15 as defined ~~described~~ in s. 731.303.

16 (11)~~(9)~~ The filing of a petition hereunder or the
17 substitution of fiduciaries pursuant to law shall not be
18 deemed as the resignation by any trust company or trust
19 department of any fiduciary capacity or relationship.

20 (12) This section applies to trust accountings for
21 accounting periods beginning on or after January 1, 2003, and
22 to written reports, other than trust accountings, received by
23 a beneficiary on or after January 1, 2003.

24 Section 13. (1) Section 731.303, Florida Statutes, as
25 amended by this act, shall be given retroactive application.

26 (2) Section 737.303, Florida Statutes, as it existed
27 prior to the effective date of this act, shall be preserved
28 and shall continue to apply to accounting periods beginning
29 before January 1, 2003.

30 (3) Section 737.307, Florida Statutes, as it existed
31 prior to the effective date of this act, shall be preserved

1 and shall continue to apply to any final, annual, or periodic
2 account for periods beginning before January 1, 2003, and
3 other statements fully disclosing the matter received by the
4 beneficiary before January 1, 2003.

5 (4) Section 660.46, Florida Statutes, as it existed
6 prior to the effective date of this act, shall be preserved
7 and shall continue to apply to any final, annual, or periodic
8 account for periods beginning before January 1, 2003, and
9 other statements fully disclosing the matter received by the
10 beneficiary before January 1, 2003.

11 Section 14. This act shall take effect upon becoming a
12 law.