

CS/HB 405

2014

1 A bill to be entitled

2 An act relating to trusts; amending ss. 736.0703 and
3 736.1011, F.S.; limiting the liability of excluded
4 trustees; providing an exception; authorizing trusts
5 to provide for exculpation of excluded trustees under
6 certain circumstances; clarifying applicability of
7 limitation of liability of excluded trustees in
8 certain situations; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
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12 Section 1. Subsection (9) of section 736.0703, Florida
13 Statutes, is amended to read:

14 736.0703 Cotrustees.—

15 (9) If the terms of a trust ~~instrument~~ provide for the
16 appointment of more than one trustee but confer upon one or more
17 of the trustees, to the exclusion of the others, the power to
18 direct or prevent specified actions of the trustees, the
19 excluded trustees shall act in accordance with the exercise of
20 the power. ~~Except in cases of willful misconduct on the part of~~
21 ~~the trustee with the authority to direct or prevent actions of~~
22 ~~the trustees of which the excluded trustee has actual knowledge,~~
23 An excluded trustee is not liable, individually or as a
24 fiduciary, for any consequence that results from compliance with
25 the exercise of the power, regardless of the information
26 available to the excluded trustee, unless with respect to the

27 exercise of such power the excluded trustee has actual knowledge
 28 of willful misconduct by the trustee entrusted with the power to
 29 direct or prevent actions of the excluded trustees. To the
 30 extent provided by terms of the trust, an excluded trustee may
 31 be exculpated from that liability even if the excluded trustee
 32 has actual knowledge of willful misconduct by the trustee
 33 entrusted with the power to direct or prevent actions of the
 34 excluded trustees. An excluded trustee has no duty or trustees.
 35 ~~The excluded trustees are relieved of any~~ obligation to review,
 36 inquire, investigate, or make recommendations or evaluations
 37 with respect to the exercise of the power. The trustee entrusted
 38 with ~~or trustees having~~ the power to direct or prevent actions
 39 of the excluded trustees shall be liable to the beneficiaries
 40 with respect to the exercise of the power as if the excluded
 41 trustees were not in office and shall have the exclusive
 42 obligation to account to and to defend any action brought by the
 43 beneficiaries with respect to the exercise of the power. This
 44 subsection does not exculpate an excluded trustee from liability
 45 arising from his or her willful misconduct. Notwithstanding s.
 46 736.0808(2), only this subsection governs the liability of the
 47 excluded trustee when the person entrusted with the power to
 48 direct the actions of the excluded trustee is also a cotrustee.

49 Section 2. Subsection (3) is added to section 736.1011,
 50 Florida Statutes, to read:

51 736.1011 Exculpation of trustee.—

52 (3) This section does not apply to terms of a trust which

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53 exculpate an excluded trustee from liability for any consequence
54 that results from compliance with the exercise of a power
55 described in s. 736.0703(9).

56 Section 3. This act shall take effect July 1, 2014.