



1 A bill to be entitled
2 An act relating to trusts; amending s. 736.0103, F.S.;
3 revising the definition of the term "interests of the
4 beneficiaries"; amending s. 736.0105, F.S.; deleting a
5 requirement that a trust be for the benefit of the
6 trust's beneficiaries; amending s. 736.0109, F.S.;
7 revising provisions relating to notice or sending of
8 electronic trust documents; providing requirements for
9 such documents to be deemed sent; requiring a certain
10 authorization to specify documents subject to
11 electronic posting; revising requirements for a
12 recipient to electronically access such documents;
13 prohibiting the termination of a recipient's
14 electronic access to such documents from invalidating
15 certain notice or sending; tolling specified
16 limitations periods under certain circumstances;
17 providing requirements for electronic access to such
18 documents to be deemed terminated by a sender;
19 providing applicability; amending s. 736.0110, F.S.;
20 providing that the Attorney General has standing to
21 assert certain rights in certain proceedings; amending
22 s. 736.0404, F.S.; deleting a restriction on the
23 purpose for which a trust is created; amending s.
24 736.04117, F.S.; providing and revising definitions;
25 authorizing an authorized trustee to appoint all or



26 part of the principal of a trust to a second trust
27 under certain circumstances; providing requirements
28 for the second trust and its beneficiaries; providing
29 that the second trust may retain, omit, or create
30 specified powers; authorizing the term of the second
31 trust to extend beyond the term of the first trust;
32 providing requirements for distributions to a second
33 trust when the authorized trustee does not have
34 absolute power; providing requirements for such second
35 trust; providing requirements for grants of power by
36 the second trust; authorizing a second trust created
37 by an authorized trustee without absolute power to
38 grant absolute power to the second trust's trustee;
39 authorizing an authorized trustee to appoint the
40 principal of a first trust to a supplemental needs
41 trust under certain circumstances; providing
42 requirements for such supplemental needs trust;
43 prohibiting an authorized trustee from distributing
44 the principal of a trust in a manner that would reduce
45 specified tax benefits; prohibiting the distribution
46 of S corporation stock from a first trust to a second
47 trust under certain circumstances; prohibiting a
48 settlor to be treated as the owner of a second trust
49 if he or she was not treated as the owner of the first
50 trust; prohibiting an authorized trustee from



51 distributing a trust's interest in property to a
52 second trust if it is subject to specified rules of
53 the Internal Revenue Code; prohibiting the exercise of
54 power to invade a trust's principal to increase an
55 authorized trustee's compensation or relieve him or
56 her from certain liability; specifying who an
57 authorized trustee must notify when he or she
58 exercises his or her power to invade the trust's
59 principal; specifying the documents that the
60 authorized trustee must provide with such notice;
61 amending s. 736.08135, F.S.; revising applicability;
62 amending s. 736.1008, F.S.; clarifying that certain
63 knowledge by a beneficiary does not cause a claim for
64 breach of trust or commence the running of a period of
65 limitations or laches; providing intent; providing for
66 retroactive application; amending s. 736.1201, F.S.;
67 defining the term "delivery of notice"; conforming a
68 provision to changes made by the act; amending s.
69 736.1205, F.S.; requiring an authorized trustee to
70 provide certain notice to the Attorney General rather
71 than the state attorney; amending ss. 736.1206,
72 736.1207, 736.1208, and 736.1209, F.S.; conforming
73 provisions; providing an effective date.

74
75 Be It Enacted by the Legislature of the State of Florida:



CS/CS/HB 481, Engrossed 1

2017

76

77 Section 1. Subsection (11) of section 736.0103, Florida
78 Statutes, is amended to read:

79 736.0103 Definitions.—Unless the context otherwise
80 requires, in this code:

81 (11) "Interests of the beneficiaries" means the beneficial
82 interests intended by the settlor as provided in the terms of a
83 ~~the~~ trust.

84 Section 2. Paragraph (c) of subsection (2) of section
85 736.0105, Florida Statutes, is amended to read:

86 736.0105 Default and mandatory rules.—

87 (2) The terms of a trust prevail over any provision of
88 this code except:

89 (c) The requirement that a trust ~~and its terms be for the~~
90 ~~benefit of the trust's beneficiaries, and that the trust have a~~
91 purpose that is lawful, not contrary to public policy, and
92 possible to achieve.

93 Section 3. Subsections (1) and (3) of section 736.0109,
94 Florida Statutes, are amended to read:

95 736.0109 Methods and waiver of notice.—

96 (1) Notice to a person under this code or the sending of a
97 document to a person under this code must be accomplished in a
98 manner reasonably suitable under the circumstances and likely to
99 result in receipt of the notice or document. Permissible methods
100 of notice or for sending a document include first-class mail,



101 personal delivery, delivery to the person's last known place of
102 residence or place of business, ~~or~~ a properly directed facsimile
103 or other electronic message, or posting to a secure electronic
104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting to an
106 electronic account or website is not deemed sent for purposes of
107 this section unless the sender complies with this subsection.
108 The sender has the burden of proving compliance with this
109 subsection ~~In addition to the methods listed in subsection (1)~~
110 ~~for sending a document, a sender may post a document to a secure~~
111 ~~electronic account or website where the document can be~~
112 ~~accessed.~~

113 (a) ~~Before a document may be posted to an electronic~~
114 ~~account or website,~~ The recipient must sign a separate written
115 authorization solely for the purpose of authorizing the sender
116 to post documents on an electronic account or website before
117 such posting. The written authorization must:

118 1. Specifically indicate whether a trust accounting, trust
119 disclosure document, or limitation notice, as those terms are
120 defined in s. 736.1008(4), will be posted in this manner, and
121 generally enumerate the other types of documents that may be
122 posted in this manner.

123 2. Contain specific instructions for accessing the
124 electronic account or website, including the security procedures
125 required to access the electronic account or website, such as a



126 | username and password.

127 | 3. Advise the recipient that a separate notice will be
128 | sent when a document is posted to the electronic account or
129 | website and the manner in which the separate notice will be
130 | sent.

131 | 4. Advise the recipient that the authorization to receive
132 | documents by electronic posting may be amended or revoked at any
133 | time and include specific instructions for revoking or amending
134 | the authorization, including the address designated for the
135 | purpose of receiving notice of the revocation or amendment.

136 | 5. Advise the recipient that posting a document on the
137 | electronic account or website may commence a limitations period
138 | as short as 6 months even if the recipient never actually
139 | accesses the electronic account, electronic website, or ~~the~~
140 | document.

141 | (b) Once the recipient signs the written authorization,
142 | the sender must provide a separate notice to the recipient when
143 | a document is posted to the electronic account or website. As
144 | used in this subsection, the term "separate notice" means a
145 | notice sent to the recipient by means other than electronic
146 | posting that, ~~which~~ identifies each document posted to the
147 | electronic account or website and provides instructions for
148 | accessing the ~~posted~~ document. The separate notice requirement
149 | is deemed satisfied if the recipient accesses the document on
150 | the electronic account or website.



151 (c) A document sent by electronic posting is deemed
152 received by the recipient on the earlier of the date on which
153 ~~that~~ the separate notice is received or the date on which ~~that~~
154 the recipient accesses the document on the electronic account or
155 website.

156 (d) At least annually after a recipient signs a written
157 authorization, a sender shall send a notice advising recipients
158 who have authorized one or more documents to be posted to an
159 electronic account or website that such posting may commence a
160 limitations period as short as 6 months even if the recipient
161 never accesses the electronic account or website or the document
162 and that authority to receive documents by electronic posting
163 may be amended or revoked at any time. This notice must be given
164 by means other than electronic posting and may not be
165 accompanied by any other written communication. Failure to
166 provide such notice within 380 days after the last notice is
167 deemed to automatically revoke the authorization to receive
168 documents in the manner permitted under this subsection 380 days
169 after the last notice is sent.

170 (e) The notice required in paragraph (d) may be in
171 substantially the following form: "You have authorized the
172 receipt of documents through posting to an electronic account or
173 website on which ~~where~~ the documents can be accessed. This
174 notice is being sent to advise you that a limitations period,
175 which may be as short as 6 months, may be running as to matters



176 disclosed in a trust accounting or other written report of a
177 trustee posted to the electronic account or website even if you
178 never actually access the electronic account or website or the
179 documents. You may amend or revoke the authorization to receive
180 documents by electronic posting at any time. If you have any
181 questions, please consult your attorney."

182 (f) A sender may rely on the recipient's authorization
183 until the recipient amends or revokes the authorization by
184 sending a notice to the address designated for that purpose in
185 the authorization or in the manner specified on the electronic
186 account or website. The recipient, at any time, may amend or
187 revoke an authorization to have documents posted on the
188 electronic account or website.

189 (g) If a document is provided to a recipient solely
190 through electronic posting pursuant to this subsection, the
191 recipient must be able to access and print or download the
192 document until the earlier of ~~must remain accessible to the~~
193 ~~recipient on the electronic account or website for at least 4~~
194 years after the date on which ~~that~~ the document is deemed
195 received by the recipient or the date on which the recipient's
196 access to the electronic account or website is terminated for
197 any reason.

198 1. If the recipient's access to the electronic account or
199 website is terminated for any reason, such termination does not
200 invalidate the notice or sending of any document previously



201 posted on the electronic account or website in accordance with
202 this subsection, but may toll the applicable limitations period
203 as provided in subparagraph 2 ~~The electronic account or website~~
204 ~~must allow the recipient to download or print the document. This~~
205 ~~subsection does not affect or alter the duties of a trustee to~~
206 ~~keep clear, distinct, and accurate records pursuant to s.~~
207 ~~736.0810 or affect or alter the time periods for which the~~
208 ~~trustee must maintain those records.~~

209 2. If the recipient's access to the electronic account or
210 website is terminated by the sender before 4 years after the
211 date on which the document was received by the recipient, any
212 applicable limitations period set forth in s. 736.1008(1) or (2)
213 that is still open is tolled for any information adequately
214 disclosed in a document sent solely by electronic posting from
215 the date on which the recipient's access to the electronic
216 account or website was terminated by the sender until 45 days
217 after the date on which the sender provides to the recipient by
218 means other than electronic posting either:

219 a. Notification of such termination and that the recipient
220 may request that any documents sent during the prior 4 years
221 solely through electronic posting be provided to him or her by
222 other means at no cost; or

223 b. Notification of such termination and that the
224 recipient's access to the electronic account or website is
225 restored.



226
227 Any applicable limitations period is further tolled from the
228 date on which any request is made pursuant to sub-subparagraph
229 2.a. until 20 days after the date on which the requested
230 documents are provided to the recipient by means other than
231 electronic posting.

232 (h) For purposes of this subsection, access to an
233 electronic account or website is terminated by the sender when
234 the sender unilaterally terminates the recipient's ability to
235 access the electronic website or account or download or print
236 any document posted on such website or account. Access is not
237 terminated by the sender when access is terminated by an action
238 of the recipient or by an action of the sender in response to
239 the recipient's request to terminate access. The recipient's
240 revocation of authorization pursuant to paragraph (f) is not
241 considered a request to terminate access ~~To be effective, the~~
242 ~~posting of a document to an electronic account or website must~~
243 ~~be done in accordance with this subsection. The sender has the~~
244 ~~burden of establishing compliance with this subsection.~~

245 (i) This subsection does not affect or alter the duties of
246 a trustee to keep clear, distinct, and accurate records pursuant
247 to s. 736.0810 or affect or alter the time periods for which the
248 trustee must maintain such records ~~preclude the sending of a~~
249 ~~document by other means.~~

250 (j) This subsection governs the posting of a document



251 solely for the purpose of giving notice under this code or the
252 sending of a document to a person under this code and does not
253 prohibit or otherwise apply to the posting of a document to an
254 electronic account or website for any other purpose or preclude
255 the sending of a document by any other means.

256 Section 4. Subsection (3) of section 736.0110, Florida
257 Statutes, is amended to read:

258 736.0110 Others treated as qualified beneficiaries.—

259 (3) The Attorney General may assert the rights of a
260 qualified beneficiary with respect to a charitable trust having
261 its principal place of administration in this state. The
262 Attorney General has standing to assert such rights in any
263 judicial proceedings.

264 Section 5. Section 736.0404, Florida Statutes, is amended
265 to read:

266 736.0404 Trust purposes.—A trust may be created only to
267 the extent the purposes of the trust are lawful, not contrary to
268 public policy, and possible to achieve. ~~A trust and its terms~~
269 ~~must be for the benefit of its beneficiaries.~~

270 Section 6. Effective upon this act becoming a law, section
271 736.04117, Florida Statutes, is amended to read:

272 736.04117 Trustee's power to invade principal in trust.—

273 (1) ~~(a)~~ DEFINITIONS.—As used in this section, the term:
274 ~~Unless the trust instrument expressly provides otherwise, a~~
275 ~~trustee who has absolute power under the terms of a trust to~~



276 ~~invade the principal of the trust, referred to in this section~~
277 ~~as the "first trust," to make distributions to or for the~~
278 ~~benefit of one or more persons may instead exercise the power by~~
279 ~~appointing all or part of the principal of the trust subject to~~
280 ~~the power in favor of a trustee of another trust, referred to in~~
281 ~~this section as the "second trust," for the current benefit of~~
282 ~~one or more of such persons under the same trust instrument or~~
283 ~~under a different trust instrument; provided:~~

284 ~~1. The beneficiaries of the second trust may include only~~
285 ~~beneficiaries of the first trust;~~

286 ~~2. The second trust may not reduce any fixed income,~~
287 ~~annuity, or unitrust interest in the assets of the first trust,~~
288 ~~and~~

289 ~~3. If any contribution to the first trust qualified for a~~
290 ~~marital or charitable deduction for federal income, gift, or~~
291 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
292 ~~amended, the second trust shall not contain any provision which,~~
293 ~~if included in the first trust, would have prevented the first~~
294 ~~trust from qualifying for such a deduction or would have reduced~~
295 ~~the amount of such deduction.~~

296 ~~(b) For purposes of this subsection, an absolute power to~~
297 ~~invade principal shall include~~

298 (a) "Absolute power" means a power to invade principal
299 that is not limited to specific or ascertainable purposes, such
300 as health, education, maintenance, and support, regardless of



301 whether ~~or not~~ the term "absolute" is used. A power to invade
302 principal for purposes such as best interests, welfare, comfort,
303 or happiness constitutes ~~shall constitute~~ an absolute power not
304 limited to specific or ascertainable purposes.

305 (b) "Authorized trustee" means a trustee, other than the
306 settlor or a beneficiary, who has the power to invade the
307 principal of a trust.

308 (c) "Beneficiary with a disability" means a beneficiary of
309 the first trust who the authorized trustee believes may qualify
310 for government benefits based on disability, regardless of
311 whether the beneficiary currently receives those benefits or has
312 been adjudicated incapacitated.

313 (d) "Current beneficiary" means a beneficiary who, on the
314 date his or her qualification is determined, is a distributee or
315 permissible distributee of trust income or principal. The term
316 includes the holder of a presently exercisable general power of
317 appointment, but does not include a person who is a beneficiary
318 only because he or she holds another power of appointment.

319 (e) "Government benefits" means financial aid or services
320 from any state, federal, or other public agency.

321 (f) "Internal Revenue Code" means the Internal Revenue
322 Code of 1986, as amended.

323 (g) "Power of appointment" has the same meaning as
324 provided in s. 731.201(30).

325 (h) "Presently exercisable general power of appointment"



326 means a power of appointment exercisable by the powerholder at
327 the relevant time. The term:

328 1. Includes a power of appointment that is exercisable
329 only after the occurrence of a specified event or that is
330 subject to a specified restriction, but only after the event has
331 occurred or the restriction has been satisfied.

332 2. Does not include a power exercisable only upon the
333 powerholder's death.

334 (i) "Substantially similar" means there is no material
335 change in a beneficiary's beneficial interests or in the power
336 to make distributions and that the power to make a distribution
337 under a second trust for the benefit of a beneficiary who is an
338 individual is substantially similar to the power under the first
339 trust to make a distribution directly to the beneficiary. A
340 distribution is deemed to be for the benefit of a beneficiary
341 if:

342 1. The distribution is applied for the benefit of a
343 beneficiary;

344 2. The beneficiary is under a legal disability or the
345 trustee reasonably believes the beneficiary is incapacitated,
346 and the distribution is made as permitted under this code; or

347 3. The distribution is made as permitted under the terms
348 of the first trust instrument and the second trust instrument
349 for the benefit of the beneficiary.

350 (j) "Supplemental needs trust" means a trust that the



351 authorized trustee believes would not be considered a resource
352 for purposes of determining whether the beneficiary who has a
353 disability is eligible for government benefits.

354 (k) "Vested interest" means a current unconditional right
355 to receive a mandatory distribution of income, a specified
356 dollar amount, or a percentage of value of a trust, or a current
357 unconditional right to withdraw income, a specified dollar
358 amount, or a percentage of value of a trust, which right is not
359 subject to the occurrence of a specified event, the passage of a
360 specified time, or the exercise of discretion.

361 1. The term includes a presently exercisable general power
362 of appointment.

363 2. The term does not include a beneficiary's interest in a
364 trust if the trustee has discretion to make a distribution of
365 trust property to a person other than such beneficiary.

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

368 (a) Unless a trust instrument expressly provides
369 otherwise, an authorized trustee who has absolute power under
370 the terms of the trust to invade its principal, referred to in
371 this section as the "first trust," to make current distributions
372 to or for the benefit of one or more beneficiaries, may instead
373 exercise such power by appointing all or part of the principal
374 of the trust subject to such power in favor of a trustee of one
375 or more other trusts, whether created under the same trust



376 instrument as the first trust or a different trust instrument,
377 including a trust instrument created for the purposes of
378 exercising the power granted by this section, each referred to
379 in this section as the "second trust," for the current benefit
380 of one or more of such beneficiaries only if:

381 1. The beneficiaries of the second trust include only
382 beneficiaries of the first trust.

383 2. The second trust does not reduce any vested interest.

384 (b) In an exercise of absolute power, the second trust
385 may:

386 1. Retain a power of appointment granted in the first
387 trust.

388 2. Omit a power of appointment granted in the first trust,
389 other than a presently exercisable general power of appointment.

390 3. Create or modify a power of appointment if the
391 powerholder is a current beneficiary of the first trust.

392 4. Create or modify a power of appointment if the
393 powerholder is a beneficiary of the first trust who is not a
394 current beneficiary, but the exercise of the power of
395 appointment may take effect only after the powerholder becomes,
396 or would have become if then living, a current beneficiary of
397 the first trust.

398 5. Extend the term of the second trust beyond the term of
399 the first trust.

400 (c) The class of permissible appointees in favor of which



401 a created or modified power of appointment may be exercised may
402 differ from the class identified in the first trust.

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

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

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

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



426 (d) Notwithstanding paragraphs (a), (b), and (c), the term
427 of the second trust may extend beyond the term of the first
428 trust, and, for any period after the first trust would have
429 otherwise terminated, in whole or in part, under the provisions
430 of the first trust, the trust instrument of the second trust
431 may, with respect to property subject to such extended term:

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

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

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

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

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



451 2. The beneficiaries of the second trust include only
452 beneficiaries of the first trust.

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

455 (b) Except as affected by any change to the interests of
456 the beneficiary with a disability, the second trusts, in the
457 aggregate, shall grant each other beneficiary of the first trust
458 beneficial interests in the second trusts which are
459 substantially similar to such beneficiary's beneficial interests
460 in the first trust.

461 (5) PROHIBITED DISTRIBUTIONS.—

462 (a) An authorized trustee may not distribute the principal
463 of a trust under this section in a manner that would prevent a
464 contribution to that trust from qualifying for, or that would
465 reduce the exclusion, deduction, or other federal tax benefit
466 that was originally claimed or could have been claimed for, that
467 contribution, including:

468 1. The exclusions under s. 2503(b) or (c) of the Internal
469 Revenue Code;

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

472 3. A charitable deduction under s. 170(a), s. 642(c), s.
473 2055(a), or s. 2522(a) of the Internal Revenue Code;

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



476 5. Any other tax benefit for income, gift, estate, or
477 generation-skipping transfer tax purposes under the Internal
478 Revenue Code.

479 (b) If S corporation stock is held in the first trust, an
480 authorized trustee may not distribute all or part of that stock
481 to a second trust that is not a permitted shareholder under s.
482 1361(c)(2) of the Internal Revenue Code. If the first trust
483 holds stock in an S corporation and is, or but for provisions of
484 paragraphs (a), (c), and (d) would be, a qualified subchapter S
485 trust within the meaning of s. 1361(d) of the Internal Revenue
486 Code, the second trust instrument may not include or omit a term
487 that prevents it from qualifying as a qualified subchapter S
488 trust.

489 (c) Except as provided in paragraphs (a), (b), and (d), an
490 authorized trustee may distribute the principal of a first trust
491 to a second trust regardless of whether the settlor is treated
492 as the owner of either trust under ss. 671-679 of the Internal
493 Revenue Code; however, if the settlor is not treated as the
494 owner of the first trust, he or she may not be treated as the
495 owner of the second trust unless he or she at all times has the
496 power to cause the second trust to cease being treated as if it
497 was owned by the settlor.

498 (d) If an interest in property which is subject to the
499 minimum distribution rules of s. 401(a)(9) of the Internal
500 Revenue Code is held in trust, an authorized trustee may not



501 distribute such an interest to a second trust under subsection
502 (2), subsection (3), or subsection (4) if the distribution would
503 shorten the otherwise applicable maximum distribution period.

504 (6) EXERCISE BY WRITING.—The exercise of a power to invade
505 principal under subsection (2), subsection (3), or subsection
506 (4) must ~~The exercise of a power to invade principal under~~
507 ~~subsection (1) shall be by a written an instrument in writing,~~
508 signed and acknowledged by the authorized trustee, and filed
509 with the records of the first trust.

510 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of
511 a power to invade principal under subsection (2), subsection
512 (3), or subsection (4):

513 (a) Is ~~(1) shall be~~ considered the exercise of a power of
514 appointment, excluding other than a power to appoint to the
515 authorized trustee, the authorized trustee's creditors, the
516 authorized trustee's estate, or the creditors of the authorized
517 trustee's estate.

518 (b) Is, ~~and shall be~~ subject to the provisions of s.
519 689.225 covering the time at which the permissible period of the
520 rule against perpetuities begins and the law that determines the
521 permissible period of the rule against perpetuities of the first
522 trust.

523 (c) May be to a second trust created or administered under
524 the law of any jurisdiction.

525 (d) May not:



- 526 1. Increase the authorized trustee's compensation beyond
527 the compensation specified in the first trust instrument; or
- 528 2. Relieve the authorized trustee from liability for
529 breach of trust or provide for indemnification of the authorized
530 trustee for any liability or claim to a greater extent than the
531 first trust instrument; however, the exercise of the power may
532 divide and reallocate fiduciary powers among fiduciaries and
533 relieve a fiduciary from liability for an act or failure to act
534 of another fiduciary as otherwise allowed under law or common
535 law.
- 536 (8) NOTICE.—
- 537 (a) ~~(4)~~ The authorized trustee shall provide written
538 notification of the manner in which he or she intends to
539 exercise his or her power to invade principal to notify all
540 qualified beneficiaries of the following parties first trust, in
541 writing, at least 60 days before prior to the effective date of
542 the authorized trustee's exercise of such power the trustee's
543 power to invade principal pursuant to subsection (2), subsection
544 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
545 intends to exercise the power.
- 546 1. All qualified beneficiaries of the first trust.
- 547 2. If paragraph (5) (c) applies, the settlor of the first
548 trust.
- 549 3. All trustees of the first trust.
- 550 4. Any person who has the power to remove or replace the



551 authorized trustee of the first trust.

552 (b) The authorized ~~A copy of the proposed instrument~~
553 ~~exercising the power shall satisfy the trustee's notice~~
554 ~~obligation to provide notice under this subsection is satisfied~~
555 by his or her providing copies of the proposed instrument
556 exercising the power, the trust instrument of the first trust,
557 and the proposed trust instrument of the second trust.

558 (c) If all of those required to be notified ~~qualified~~
559 ~~beneficiaries~~ waive the notice period by signed written
560 instrument delivered to the authorized trustee, the authorized
561 trustee's power to invade principal shall be exercisable
562 immediately.

563 (d) The authorized trustee's notice under this subsection
564 ~~does shall~~ not limit the right of any beneficiary to object to
565 the exercise of the authorized trustee's power to invade
566 principal except as otherwise provided in other applicable
567 provisions of this code.

568 (9)-(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
569 PROHIBITION.—The exercise of the power to invade principal under
570 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
571 prohibited by a spendthrift clause or by a provision in the
572 trust instrument that prohibits amendment or revocation of the
573 trust.

574 (10)-(6) NO DUTY TO EXERCISE.—Nothing in this section is
575 intended to create or imply a duty to exercise a power to invade



576 principal, and no inference of impropriety may ~~shall~~ be made as
577 a result of an authorized trustee's failure to exercise a
578 ~~trustee not exercising~~ the power to invade principal conferred
579 under subsections (2), (3), and (4) ~~subsection (1)~~.

580 (11)-(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS. ~~The~~
581 ~~provisions of~~ This section may ~~shall~~ not be construed to abridge
582 the right of any trustee who has a power of invasion to appoint
583 property in further trust that arises under the terms of the
584 first trust or under any other section of this code or under
585 another provision of law or under common law.

586 Section 7. Subsection (3) of section 736.08135, Florida
587 Statutes, is amended to read:

588 736.08135 Trust accountings.—

589 (3) Subsections (1) and (2) govern the form and content of
590 ~~This section applies to~~ all trust accountings rendered for any
591 accounting periods beginning on or after January 1, 2003, and
592 all trust accountings rendered on or after July 1, 2017. This
593 subsection does not affect the beginning period from which a
594 trustee is required to render a trust accounting.

595 Section 8. Subsection (3) of section 736.1008, Florida
596 Statutes, is amended to read:

597 736.1008 Limitations on proceedings against trustees.—

598 (3) When a trustee has not issued a final trust accounting
599 or has not given written notice to the beneficiary of the
600 availability of the trust records for examination and that



601 claims with respect to matters not adequately disclosed may be
602 barred, a claim against the trustee for breach of trust based on
603 a matter not adequately disclosed in a trust disclosure document
604 is barred as provided in chapter 95 and accrues when the
605 beneficiary has actual knowledge of:

606 (a) The facts upon which the claim is based, if such
607 actual knowledge is established by clear and convincing
608 evidence; or

609 (b) The trustee's repudiation of the trust or adverse
610 possession of trust assets.

611
612 Paragraph (a) applies to claims based upon acts or omissions
613 occurring on or after July 1, 2008. A beneficiary's actual
614 knowledge that he or she has not received a trust accounting
615 does not cause a claim to accrue against the trustee for breach
616 of trust based upon the failure to provide a trust accounting
617 required by s. 736.0813 or former s. 737.303, and does not
618 commence the running of any period of limitations or laches for
619 such a claim, and paragraph (a) and chapter 95 do not bar any
620 such claim.

621 Section 9. The changes to ss. 736.08135 and 736.1008,
622 Florida Statutes, made by this act are intended to clarify
623 existing law, are remedial in nature, and apply retroactively to
624 all cases pending or commenced on or after July 1, 2017.

625 Section 10. Subsections (2), (3), and (4) of section



626 736.1201, Florida Statutes, are renumbered as subsections (3),
627 (4), and (5), respectively, present subsection (5) of that
628 section is amended, and a new subsection (2) is added to that
629 section, to read:

630 736.1201 Definitions.—As used in this part:

631 (2) "Delivery of notice" means delivery of a written
632 notice required under this part using any commercial delivery
633 service requiring a signed receipt or by any form of mail
634 requiring a signed receipt.

635 ~~(5) "State attorney" means the state attorney for the~~
636 ~~judicial circuit of the principal place of administration of the~~
637 ~~trust pursuant to s. 736.0108.~~

638 Section 11. Section 736.1205, Florida Statutes, is amended
639 to read:

640 736.1205 Notice that this part does not apply.—In the case
641 of a power to make distributions, if the trustee determines that
642 the governing instrument contains provisions that are more
643 restrictive than s. 736.1204(2), or if the trust contains other
644 powers, inconsistent with the provisions of s. 736.1204(3) that
645 specifically direct acts by the trustee, the trustee shall
646 notify the ~~state~~ Attorney General by delivery of notice when the
647 trust becomes subject to this part. Section 736.1204 does not
648 apply to any trust for which notice has been given pursuant to
649 this section unless the trust is amended to comply with the
650 terms of this part.



651 Section 12. Subsection (2) of section 736.1206, Florida
652 Statutes, is amended to read:

653 736.1206 Power to amend trust instrument.—

654 (2) In the case of a charitable trust that is not subject
655 to ~~the provisions of~~ subsection (1), the trustee may amend the
656 governing instrument to comply with ~~the provisions of~~ s.
657 736.1204(2) after delivery of notice to, and with the consent
658 of, ~~the state~~ Attorney General.

659 Section 13. Section 736.1207, Florida Statutes, is amended
660 to read:

661 736.1207 Power of court to permit deviation.—This part
662 does not affect the power of a court to relieve a trustee from
663 any restrictions on the powers and duties that are placed on the
664 trustee by the governing instrument or applicable law for cause
665 shown and on complaint of the trustee, the Attorney General
666 ~~state attorney~~, or an affected beneficiary and notice to the
667 affected parties.

668 Section 14. Paragraph (b) of subsection (4) of section
669 736.1208, Florida Statutes, is amended to read:

670 736.1208 Release; property and persons affected; manner of
671 effecting.—

672 (4) Delivery of a release shall be accomplished as
673 follows:

674 (b) If the release is accomplished by reducing the class
675 of permissible charitable organizations, by delivery of notice a



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676 | ~~copy~~ of the release to the ~~state~~ Attorney General, including a
677 | copy of the release.

678 | Section 15. Section 736.1209, Florida Statutes, is amended
679 | to read:

680 | 736.1209 Election to come under this part.—With the
681 | consent of that organization or organizations, a trustee of a
682 | trust for the benefit of a public charitable organization or
683 | organizations may come under s. 736.1208(5) by delivery of
684 | notice to filing with the state Attorney General of the an
685 | election, accompanied by the proof of required consent.
686 | Thereafter the trust shall be subject to s. 736.1208(5).

687 | Section 16. Except as otherwise provided in this act and
688 | except for this section, which shall take effect upon becoming a
689 | law, this act shall take effect July 1, 2017.