

**By** the Committees on Community Affairs; and Judiciary; and  
Senator Berman

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1                   A bill to be entitled  
2       An act relating to estates and trusts; amending s.  
3       69.031, F.S.; requiring the court to allow an officer  
4       to elect to post and maintain a certain bond;  
5       requiring the court to vacate or terminate an order  
6       under certain circumstances; making technical changes;  
7       amending s. 732.507, F.S.; providing that certain  
8       provisions of a will are void upon dissolution of  
9       marriage; specifying when dissolution of marriage  
10      occurs; providing applicability; amending s. 736.0103,  
11      F.S.; defining terms; revising the definition of the  
12      term "terms of a trust"; amending s. 736.0105, F.S.;  
13      revising the exceptions for when the terms of a trust  
14      do not prevail over provisions of the Florida Trust  
15      Code; amending s. 736.0201, F.S.; authorizing certain  
16      proceedings to determine the homestead status of real  
17      property owned by a trust to be filed in the probate  
18      proceeding for the settlor's estate; requiring that  
19      such proceedings be governed by the Florida Probate  
20      Rules; amending s. 736.0603, F.S.; transferring  
21      provisions that authorize a trustee to follow certain  
22      directions; amending s. 736.0703, F.S.; conforming  
23      provisions to changes made by the act; repealing s.  
24      736.0808, F.S., relating to powers to direct; amending  
25      s. 736.1008, F.S.; specifying that certain claims  
26      barred against a trustee or trust director are also  
27      barred against certain persons acting for that trustee  
28      or trust director; conforming provisions to changes  
29      made by the act; amending s. 736.1017, F.S.; revising

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30 the information required to be included in a  
31 certification of trust; amending s. 736.1105, F.S.;  
32 revising the effects that subsequent marriages,  
33 births, adoptions, or dissolutions of marriage have on  
34 a revocable trust; providing construction; providing  
35 applicability; creating s. 736.1109, F.S.; specifying  
36 how title passes for certain devisees of homesteads  
37 which violate the State Constitution; specifying that  
38 certain powers do not subject an interest in a  
39 protected homestead to certain claims; providing  
40 applicability; creating part XIV of ch. 736, F.S.,  
41 entitled the "Florida Uniform Directed Trust Act";  
42 creating s. 736.1401, F.S.; providing a short title;  
43 creating s. 736.1403, F.S.; providing applicability;  
44 providing for the validity of certain terms in a  
45 directed trust which designate principal places of  
46 administration; creating s. 736.1405, F.S.; defining  
47 the term "power of appointment"; providing  
48 applicability; specifying the types of powers granted  
49 to persons other than trustees; creating s. 736.1406,  
50 F.S.; authorizing the terms of a trust to grant a  
51 power of direction to a trust director; specifying the  
52 powers included in a power of direction; creating s.  
53 736.1407, F.S.; providing for limitations on trust  
54 directors; creating s. 736.1408, F.S.; providing  
55 duties and liabilities for trust directors; creating  
56 s. 736.1409, F.S.; providing duties and liabilities  
57 for directed trustees; creating s. 736.141, F.S.;  
58 requiring a trustee to provide certain information to

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59 a trust director; requiring a trust director to  
60 provide certain information to a trustee or another  
61 trust director and a qualified beneficiary; providing  
62 that a trustee or a trust director acting in reliance  
63 on certain information is not liable for a breach of  
64 trust in certain circumstances; creating s. 736.1411,  
65 F.S.; specifying that trustees and trust directors do  
66 not have a duty to monitor, inform, or advise  
67 specified persons under certain circumstances;  
68 creating s. 736.1412, F.S.; transferring provisions  
69 relating to the appointment of trustees; creating s.  
70 736.1413, F.S.; providing limitations on actions  
71 against trust directors; creating s. 736.1414, F.S.;  
72 authorizing trust directors to assert specified  
73 defenses in certain actions; creating s. 736.1415,  
74 F.S.; specifying that a trust director submits to  
75 specified personal jurisdiction by accepting  
76 appointment as a trust director; providing  
77 construction; creating s. 736.1416, F.S.; requiring  
78 trust directors to be considered a trustee for certain  
79 purposes; authorizing certain persons to make a  
80 specified written demand to accept or confirm prior  
81 acceptance of trust directorships; creating part XV of  
82 ch. 736, F.S., entitled the "Community Property Trust  
83 Act"; creating s. 736.1501, F.S.; providing a short  
84 title; creating s. 736.1502, F.S.; defining terms;  
85 creating s. 736.1503, F.S.; providing that an  
86 arrangement is a community property trust in certain  
87 circumstances; creating s. 736.1504, F.S.; authorizing

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88 settlor spouses to agree upon certain terms in an  
89 agreement establishing a community property trust;  
90 specifying when a community property trust may be  
91 amended or revoked; specifying qualified beneficiaries  
92 of community property trusts; creating s. 736.1505,  
93 F.S.; providing that settlor spouses may classify any  
94 property as community property by transferring that  
95 property to a community property trust regardless of  
96 domicile; providing for enforceability and duration of  
97 a community property trust; providing that the right  
98 to manage and control certain property is determined  
99 by the terms of the trust agreement; providing the  
100 effect of distributions from a community property  
101 trust; creating s. 736.1506, F.S.; providing for the  
102 satisfaction of obligations incurred by one or both  
103 spouses from a community property trust; creating s.  
104 736.1507, F.S.; providing for the disposition or  
105 distribution of certain property upon the death of a  
106 spouse; creating s. 736.1508, F.S.; providing for the  
107 termination of a community property trust upon  
108 dissolution of marriage; creating s. 736.1509, F.S.;  
109 providing that a community property trust does not  
110 adversely affect certain rights of a child; creating  
111 s. 736.151, F.S.; providing that certain property held  
112 in a community property trust qualifies as homestead  
113 property; creating s. 736.1511, F.S.; providing for  
114 the application of the Internal Revenue Code to a  
115 community property trust; creating s. 736.1512, F.S.;  
116 providing that a community property trust is not

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117 enforceable in certain circumstances; amending ss.  
118 736.0802, 736.08125, and 738.104, F.S.; conforming  
119 cross-references; amending s. 744.3679, F.S.;  
120 conforming a provision to changes made by the act;  
121 providing a directive to the Division of Law Revision;  
122 providing for severability; providing effective dates.  
123

124 Be It Enacted by the Legislature of the State of Florida:  
125

126 Section 1. Effective upon this act becoming a law, section  
127 69.031, Florida Statutes, is amended to read:

128 69.031 Designated financial institutions for property  
129 ~~assets~~ in hands of guardians, curators, administrators,  
130 trustees, receivers, or other officers.—

131 (1) When it is expedient in the judgment of any court  
132 having jurisdiction of any estate in process of administration  
133 by any guardian, curator, executor, administrator, trustee,  
134 receiver, or other officer, because the size of the bond  
135 required of the officer is burdensome or for other cause, the  
136 court may order part or all of the personal property assets of  
137 the estate placed with a bank, trust company, or savings and  
138 loan association (which savings and loan association is a member  
139 of the Federal Savings and Loan Insurance Corporation and doing  
140 business in this state) designated by the court, consideration  
141 being given to any bank, trust company or savings and loan  
142 association proposed by the officer. Notwithstanding the  
143 foregoing, in probate proceedings and in accordance with s.  
144 733.402, the court shall allow the officer at any time to elect  
145 to post and maintain bond for the value of the personal

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146 property, or such other reasonable amount determined by the  
147 court, whereupon the court shall vacate or terminate any order  
148 establishing the depository. When the property is ~~assets are~~  
149 placed with the designated financial institution, it shall file  
150 a receipt therefor in the name of the estate and give the  
151 officer a copy. Such receipt shall acknowledge the property  
152 ~~assets~~ received by the financial institution. All interest,  
153 dividends, principal and other debts collected by the financial  
154 institution on account thereof shall be held by the financial  
155 institution in safekeeping, subject to the instructions of the  
156 officer authorized by order of the court directed to the  
157 financial institution.

158 (2) Accountings shall be made to the officer at reasonably  
159 frequent intervals. After the receipt for the original property  
160 ~~assets~~ has been filed by the financial institution, the court  
161 shall waive the bond given or to be given or reduce it so that  
162 it shall apply only to the estate remaining in the hands of the  
163 officer, whichever the court deems proper.

164 (3) When the court has ordered any property ~~assets~~ of an  
165 estate to be placed with a designated financial institution, any  
166 person or corporation having possession or control of any of the  
167 property ~~assets~~, or owing interest, dividends, principal or  
168 other debts on account thereof, shall pay and deliver such  
169 property ~~assets~~, interest, dividends, principal and other debts  
170 to the financial institution on its demand whether the officer  
171 has duly qualified or not, and the receipt of the financial  
172 institution relieves the person or corporation from further  
173 responsibility therefor.

174 (4) Any bank, trust company, or savings and loan

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175 association which is designated under this section, may accept  
176 or reject the designation in any instance, and shall file its  
177 acceptance or rejection with the court making the designation  
178 within 15 days after actual knowledge of the designation comes  
179 to the attention of the financial institution, and if the  
180 financial institution accepts, it shall be allowed a reasonable  
181 amount for its services and expenses which the court may allow  
182 as a charge against the property assets placed with the  
183 financial institution.

184 Section 2. Effective upon this act becoming a law, section  
185 732.507, Florida Statutes, is amended to read:

186 732.507 Effect of subsequent marriage, birth, adoption, or  
187 dissolution of marriage.—

188 (1) Neither subsequent marriage, birth, nor adoption of  
189 descendants shall revoke the prior will of any person, but the  
190 pretermitted child or spouse shall inherit as set forth in ss.  
191 732.301 and 732.302, regardless of the prior will.

192 (2) Any provision of a will ~~executed by a married person~~  
193 that affects the testator's spouse ~~is of that person shall~~  
194 ~~become~~ void upon dissolution of the marriage of the testator and  
195 the spouse, whether the marriage occurred before or after the  
196 execution of such will. Upon dissolution of marriage ~~the divorce~~  
197 ~~of that person or upon the dissolution or annulment of the~~  
198 ~~marriage. After the dissolution, divorce, or annulment, the will~~  
199 shall be ~~administered and~~ construed as if the ~~former spouse had~~  
200 died at the time of the dissolution of marriage, divorce, or  
201 ~~annulment of the marriage, unless the will or the dissolution or~~  
202 ~~divorce judgment expressly provides otherwise.~~

203 (a) Dissolution of marriage occurs at the time the

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204 decendent's marriage is judicially dissolved or declared invalid  
205 by court order.

206 (b) This subsection does not invalidate a provision of a  
207 will:

208 1. Executed by the testator after the dissolution of the  
209 marriage;

210 2. If there is a specific intention to the contrary stated  
211 in the will; or

212 3. If the dissolution of marriage judgment expressly  
213 provides otherwise.

214 (3) This section applies to wills of decedents who die on  
215 or after the effective date of this section.

216 Section 3. Present subsections (6) through (13), (14)  
217 through (21), and (22) and (23) of section 736.0103, Florida  
218 Statutes, are redesignated as subsections (8) through (15), (17)  
219 through (24), and (26) and (27), respectively, new subsections  
220 (6), (7), and (16) and subsection (25) are added to that  
221 section, and present subsection (21) of that section is amended,  
222 to read:

223 736.0103 Definitions.—Unless the context otherwise  
224 requires, in this code:

225 (6) "Directed trust" means a trust for which the terms of  
226 the trust grant a power of direction.

227 (7) "Directed trustee" means a trustee that is subject to a  
228 trust director's power of direction.

229 (16) "Power of direction" means a power over a trust  
230 granted to a person by the terms of the trust to the extent the  
231 power is exercisable while the person is not serving as a  
232 trustee. The term includes a power over the investment,



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233 management, or distribution of trust property, a power to amend  
234 a trust instrument or terminate a trust, or a power over other  
235 matters of trust administration. The term excludes the powers  
236 excluded from part XIV of this chapter under s. 736.1405(2).

237 (24) ~~(21)~~ "Terms of a trust" means:

238 (a) Except as otherwise provided in paragraph (b), the  
239 manifestation of the settlor's intent regarding a trust's  
240 provisions as:

241 1. Expressed in the trust instrument; or

242 2. Established by other evidence that would be admissible  
243 in a judicial proceeding; or

244 (b) The trust's provisions as established, determined, or  
245 amended by:

246 1. A trustee or trust director in accordance with  
247 applicable law;

248 2. Court order; or

249 3. A nonjudicial settlement agreement under s. 736.0111,  
250 relating to nonjudicial settlement agreements ~~the manifestation~~  
251 of the settlor's intent regarding a trust's provisions as  
252 expressed in the trust instrument or as may be established by  
253 other evidence that would be admissible in a judicial  
254 proceeding.

255 (25) "Trust director" means a person who is granted a power  
256 of direction by the terms of a trust to the extent the power is  
257 exercisable while the person is not serving as a trustee. The  
258 person is a trust director whether or not the terms of the trust  
259 refer to the person as a trust director and whether or not the  
260 person is a beneficiary or settlor of the trust.

261 Section 4. Paragraph (b) of subsection (2) of section

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262 736.0105, Florida Statutes, is amended to read:

263 736.0105 Default and mandatory rules.—

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

266 (b) Subject to s. 736.1409, relating to the duties and  
267 liabilities of a directed trustee; s. 736.1411, relating to  
268 limitations on duties of a trustee or trust director to monitor,  
269 inform, or advise on matters involving the other; and s.  
270 736.1412, relating to the allocation of powers among cotrustees,  
271 requirements for excluded cotrustees to act as a directed  
272 trustee, and liability and related obligations of directing  
273 cotrustees, the duty of the trustee to act in good faith and in  
274 accordance with the terms and purposes of the trust and the  
275 interests of the beneficiaries.

276 Section 5. Subsection (1) of section 736.0201, Florida  
277 Statutes, is amended, and subsection (7) is added to that  
278 section, to read:

279 736.0201 Role of court in trust proceedings.—

280 (1) Except as provided in subsections (5), ~~and~~ (6), and (7)  
281 and s. 736.0206, judicial proceedings concerning trusts shall be  
282 commenced by filing a complaint and shall be governed by the  
283 Florida Rules of Civil Procedure.

284 (7) A proceeding to determine the homestead status of real  
285 property owned by a trust may be filed in the probate proceeding  
286 for the settlor's estate if the settlor was treated as the owner  
287 of the interest held in the trust under s. 732.4015. The  
288 proceeding shall be governed by the Florida Probate Rules.

289 Section 6. Subsection (3) is added to section 736.0603,  
290 Florida Statutes, to read:

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291 736.0603 Settlor's powers; powers of withdrawal.—

292 (3) Subject to ss. 736.0403(2) and 736.0602(3) (a), the  
293 trustee may follow a direction of the settlor that is contrary  
294 to the terms of the trust while a trust is revocable.

295 Section 7. Subsections (3), (7), and (9) of section  
296 736.0703, Florida Statutes, are amended to read:

297 736.0703 Cotrustees.—

298 (3) Subject to s. 736.1412, relating to the allocation of  
299 powers among cotrustees, requirements for excluded cotrustees to  
300 act as a directed trustee, and liability and related obligations  
301 of directing cotrustees, a cotrustee must participate in the  
302 performance of a trustee's function unless the cotrustee is  
303 unavailable to perform the function because of absence, illness,  
304 disqualification under other provision of law, or other  
305 temporary incapacity or the cotrustee has properly delegated the  
306 performance of the function to another cotrustee.

307 (7) Except as otherwise provided in s. 736.1412, relating  
308 to the allocation of powers among cotrustees, requirements for  
309 excluded cotrustees to act as a directed trustee, and liability  
310 and related obligations of directing cotrustees ~~subsection (9),~~  
311 each cotrustee shall exercise reasonable care to:

312 (a) Prevent a cotrustee from committing a breach of trust.

313 (b) Compel a cotrustee to redress a breach of trust.

314 ~~(9) If the terms of a trust provide for the appointment of~~  
315 ~~more than one trustee but confer upon one or more of the~~  
316 ~~trustees, to the exclusion of the others, the power to direct or~~  
317 ~~prevent specified actions of the trustees, the excluded trustees~~  
318 ~~shall act in accordance with the exercise of the power. Except~~  
319 ~~in cases of willful misconduct on the part of the excluded~~

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320 trustee, ~~an excluded trustee is not liable, individually or as a~~  
321 ~~fiduciary, for any consequence that results from compliance with~~  
322 ~~the exercise of the power. An excluded trustee does not have a~~  
323 ~~duty or an obligation to review, inquire, investigate, or make~~  
324 ~~recommendations or evaluations with respect to the exercise of~~  
325 ~~the power. The trustee or trustees having the power to direct or~~  
326 ~~prevent actions of the excluded trustees shall be liable to the~~  
327 ~~beneficiaries with respect to the exercise of the power as if~~  
328 ~~the excluded trustees were not in office and shall have the~~  
329 ~~exclusive obligation to account to and to defend any action~~  
330 ~~brought by the beneficiaries with respect to the exercise of the~~  
331 ~~power. The provisions of s. 736.0808(2) do not apply if the~~  
332 ~~person entrusted with the power to direct the actions of the~~  
333 ~~excluded trustee is also a cotrustee.~~

334 Section 8. Section 736.0808, Florida Statutes, is repealed.

335 Section 9. Present subsection (7) of section 736.1008,  
336 Florida Statutes, is redesignated as subsection (8), a new  
337 subsection (7) is added to that section, and paragraph (a) of  
338 subsection (1), subsection (2), and paragraphs (a) and (c) of  
339 subsection (4) of that section are amended, to read:

340 736.1008 Limitations on proceedings against trustees.-

341 (1) Except as provided in subsection (2), all claims by a  
342 beneficiary against a trustee for breach of trust are barred as  
343 provided in chapter 95 as to:

344 (a) All matters adequately disclosed in a trust disclosure  
345 document issued by the trustee or a trust director, with the  
346 limitations period beginning on the date of receipt of adequate  
347 disclosure.

348 (2) Unless sooner barred by adjudication, consent, or

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349 limitations, a beneficiary is barred from bringing an action  
350 against a trustee for breach of trust with respect to a matter  
351 that was adequately disclosed in a trust disclosure document  
352 unless a proceeding to assert the claim is commenced within 6  
353 months after receipt from the trustee or a trust director of the  
354 trust disclosure document or a limitation notice that applies to  
355 that disclosure document, whichever is received later.

356 (4) As used in this section, the term:

357 (a) "Trust disclosure document" means a trust accounting or  
358 any other written report of the trustee or a trust director. A  
359 trust disclosure document adequately discloses a matter if the  
360 document provides sufficient information so that a beneficiary  
361 knows of a claim or reasonably should have inquired into the  
362 existence of a claim with respect to that matter.

363 (c) "Limitation notice" means a written statement of the  
364 trustee or a trust director that an action by a beneficiary  
365 ~~against the trustee~~ for breach of trust based on any matter  
366 adequately disclosed in a trust disclosure document may be  
367 barred unless the action is commenced within 6 months after  
368 receipt of the trust disclosure document or receipt of a  
369 limitation notice that applies to that trust disclosure  
370 document, whichever is later. A limitation notice may but is not  
371 required to be in the following form: "An action for breach of  
372 trust based on matters disclosed in a trust accounting or other  
373 written report of the trustee or a trust director may be subject  
374 to a 6-month statute of limitations from the receipt of the  
375 trust accounting or other written report. If you have questions,  
376 please consult your attorney."

377 (7) Any claim barred against a trustee or trust director

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378 under this section is also barred against the directors,  
379 officers, and employees acting for the trustee or trust  
380 director.

381 Section 10. Present paragraphs (e), (f), and (g) of  
382 subsection (1) of section 736.1017, Florida Statutes, are  
383 redesignated as paragraphs (f), (g), and (h), respectively, and  
384 a new paragraph (e) is added to that subsection, to read:

385 736.1017 Certification of trust.—

386 (1) Instead of furnishing a copy of the trust instrument to  
387 a person other than a beneficiary, the trustee may furnish to  
388 the person a certification of trust containing the following  
389 information:

390 (e) Whether the trust contains any powers of direction, and  
391 if so, the identity of the current trust directors, the trustee  
392 powers subject to a power of direction, and whether the trust  
393 directors have directed or authorized the trustee to engage in  
394 the proposed transaction for which the certification of trust  
395 was issued.

396 Section 11. Effective upon this act becoming a law, section  
397 736.1105, Florida Statutes, is amended to read:

398 (Substantial rewording of section. See  
399 s. 736.1105, F.S., for present text.)

400 736.1105 Effect of subsequent marriage, birth, adoption, or  
401 dissolution of marriage.—

402 (1) Neither subsequent marriage, birth, nor adoption of  
403 descendants shall revoke the revocable trust of any person.

404 (2) Any provision of a revocable trust that affects the  
405 settlor's spouse is void upon dissolution of the marriage of the  
406 settlor and the spouse, whether the marriage occurred before or

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407 after the execution of such revocable trust. Upon dissolution of  
408 marriage, the revocable trust shall be construed as if the  
409 spouse had died at the time of the dissolution of marriage.

410 (a) Dissolution of marriage occurs at the time the  
411 decedent's marriage is judicially dissolved or declared invalid  
412 by court order.

413 (b) This subsection does not invalidate a provision of a  
414 revocable trust:

415 1. Executed by the settlor after the dissolution of the  
416 marriage;

417 2. If there is a specific intention to the contrary stated  
418 in the revocable trust; or

419 3. If the dissolution of marriage judgment expressly  
420 provides otherwise.

421 (3) This section applies to revocable trusts of decedents  
422 who die on or after the effective date of this section.

423 Section 12. Section 736.1109, Florida Statutes, is created  
424 to read:

425 736.1109 Testamentary and revocable trusts; homestead  
426 protections.-

427 (1) If a devise of homestead under a trust violates the  
428 limitations on the devise of homestead in s. 4(c), Art. X of the  
429 State Constitution, title shall pass as provided in s. 732.401  
430 at the moment of death.

431 (2) A power of sale or general direction to pay debts,  
432 expenses and claims within the trust instrument does not subject  
433 an interest in the protected homestead to the claims of  
434 decedent's creditors, expenses of administration, and  
435 obligations of the decedent's estate as provided in s.

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436 736.05053.

437 (3) If a trust directs the sale of property that would  
438 otherwise qualify as protected homestead, and the property is  
439 not subject to the constitutional limitations on the devise of  
440 homestead under the State Constitution, title shall remain  
441 vested in the trustee and subject to the provisions of the  
442 trust.

443 (4) This section applies only to trusts described in s.  
444 733.707(3) and to testamentary trusts.

445 (5) This section is intended to clarify existing law and  
446 applies to the administration of trusts and estates of decedents  
447 who die before, on, or after July 1, 2021.

448 Section 13. Part XIV of chapter 736, Florida Statutes,  
449 consisting of ss. 736.1401-736.1416, Florida Statutes, is  
450 created and entitled the "Florida Uniform Directed Trust Act."

451 Section 14. Section 736.1401, Florida Statutes, is created  
452 to read:

453 736.1401 Short title.—This part may be cited as the  
454 "Florida Uniform Directed Trust Act."

455 Section 15. Section 736.1403, Florida Statutes, is created  
456 to read:

457 736.1403 Application; principal place of administration.—

458 (1) This part applies to a trust subject to this chapter,  
459 whenever created, that has its principal place of administration  
460 in the state, subject to the following rules:

461 (a) If the trust was created before July 1, 2021, this part  
462 applies only to a decision or action occurring on or after July  
463 1, 2021.

464 (b) If the principal place of administration of the trust



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465 is changed to the state on or after July 1, 2021, this part  
466 applies only to a decision or action occurring on or after the  
467 date of the change.

468 (2) In addition to s. 736.0108, relating to a trust's  
469 principal place of administration, in a directed trust, terms of  
470 the trust that designate the principal place of administration  
471 of the trust in the state are valid and controlling if a trust  
472 director's principal place of business is located in or a trust  
473 director is a resident of the state.

474 Section 16. Section 736.1405, Florida Statutes, is created  
475 to read:

476 736.1405 Exclusions.—

477 (1) As used in this section, the term "power of  
478 appointment" means a power that enables a person acting in a  
479 nonfiduciary capacity to designate a recipient of an ownership  
480 interest in or another power of appointment over trust property.

481 (2) Unless the terms of a trust expressly provide otherwise  
482 by specific reference to this part, section, or paragraph, this  
483 part does not apply to:

484 (a) A power of appointment;

485 (b) A power to appoint or remove a trustee or trust  
486 director;

487 (c) A power of a settlor over a trust while the trust is  
488 revocable by that settlor;

489 (d) A power of a beneficiary over a trust to the extent the  
490 exercise or nonexercise of the power affects the beneficial  
491 interest of:

492 1. The beneficiary; or

493 2. Another beneficiary represented by the beneficiary under

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494 ss. 736.0301-736.0305 with respect to the exercise or  
495 nonexercise of the power;

496 (e) A power over a trust if the terms of the trust provide  
497 that the power is held in a nonfiduciary capacity; and

498 1. The power must be held in a nonfiduciary capacity to  
499 achieve the settlor's tax objectives under the United States  
500 Internal Revenue Code of 1986, as amended, and regulations  
501 issued thereunder, as amended; or

502 2. It is a power to reimburse the settlor for all or a part  
503 of the settlor's income tax liabilities attributable to the  
504 income of the trust; or

505 (f) A power to add or to release a power under the trust  
506 instrument if the power subject to addition or release causes  
507 the settlor to be treated as the owner of all or any portion of  
508 the trust for federal income tax purposes.

509 (3) Unless the terms of a trust provide otherwise, a power  
510 granted to a person other than a trustee:

511 (a) To designate a recipient of an ownership interest in  
512 trust property, including a power to terminate a trust, is a  
513 power of appointment and not a power of direction.

514 (b) To create, modify, or terminate a power of appointment  
515 is a power of direction and not a power of appointment, except a  
516 power to create a power of appointment that is an element of a  
517 broader power to affect an ownership interest in trust property  
518 beyond the mere creation of a power of appointment, such as a  
519 power to appoint trust property in further trust, is a power of  
520 appointment and not a power of direction.

521 Section 17. Section 736.1406, Florida Statutes, is created  
522 to read:

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523 736.1406 Power of trust director.-

524 (1) Subject to s. 736.1407, relating to trust directors  
525 being subject to the same rules as a trustee regarding Social  
526 Security Act reimbursement requirements and charitable trust  
527 instruments, the terms of a trust may grant a power of direction  
528 to a trust director.

529 (2) A power of direction includes only those powers granted  
530 by the terms of the trust.

531 (3) Unless the terms of a trust provide otherwise:

532 (a) A trust director may exercise any further power  
533 appropriate to the exercise or nonexercise of a power of  
534 direction granted to the trust director under subsection (1);  
535 and

536 (b) Trust directors with joint powers must act by majority  
537 decision.

538 Section 18. Section 736.1407, Florida Statutes, is created  
539 to read:

540 736.1407 Limitations on trust director.-A trust director is  
541 subject to the same rules as a trustee in a like position and  
542 under similar circumstances in the exercise or nonexercise of a  
543 power of direction or further power under s. 736.1406(3) (a),  
544 relating to additional power granted to a trust director in  
545 furtherance of an express power of direction, regarding:

546 (1) A payback provision in the terms of a trust necessary  
547 to comply with the reimbursement requirements of s. 1917 of the  
548 Social Security Act, 42 U.S.C. s. 1396p(d) (4) (A), as amended,  
549 and regulations issued thereunder, as amended.

550 (2) A charitable interest in the trust, including notice  
551 regarding the interest to the Attorney General.

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552 Section 19. Section 736.1408, Florida Statutes, is created  
553 to read:

554 736.1408 Duty and liability of trust director.—

555 (1) Subject to subsection (2), with respect to a power of  
556 direction or further power under s. 736.1406(3) (a), relating to  
557 additional power granted to a trust director in furtherance of  
558 an express power of direction:

559 (a) A trust director has the same fiduciary duty and  
560 liability in the exercise or nonexercise of the power:

561 1. If the power is held individually, as a sole trustee in  
562 a like position and under similar circumstances; or

563 2. If the power is held jointly with a trustee or another  
564 trust director, as a cotrustee in a like position and under  
565 similar circumstances.

566 (b) The terms of the trust may vary the trust director's  
567 duty or liability to the same extent the terms of the trust may  
568 vary the duty or liability of a trustee in a like position and  
569 under similar circumstances.

570 (2) Unless the terms of a trust provide otherwise, if a  
571 trust director is licensed, certified, or otherwise authorized  
572 or permitted by law other than this part to provide health care  
573 in the ordinary course of the trust director's business or  
574 practice of a profession, to the extent the trust director acts  
575 in that capacity the trust director has no duty or liability  
576 under this part.

577 (3) The terms of a trust may impose a duty or liability on  
578 a trust director in addition to the duties and liabilities under  
579 this section.

580 Section 20. Section 736.1409, Florida Statutes, is created

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581 to read:

582 736.1409 Duty and liability of directed trustee.-

583 (1) Subject to subsection (2), a directed trustee shall  
584 take reasonable action to comply with a trust director's  
585 exercise or nonexercise of a power of direction or further power  
586 under s. 736.1406(3) (a), relating to additional power granted to  
587 a trust director in furtherance of an express power of  
588 direction, and the trustee is not liable for such reasonable  
589 action.

590 (2) A directed trustee may not comply with a trust  
591 director's exercise or nonexercise of a power of direction or  
592 further power under s. 736.1406(3) (a), relating to additional  
593 power granted to a trust director in furtherance of an express  
594 power of direction, to the extent that by complying the trustee  
595 would engage in willful misconduct.

596 (3) Before complying with a trust director's exercise of a  
597 power of direction, the directed trustee shall determine whether  
598 or not the exercise is within the scope of the trust director's  
599 power of direction. The exercise of a power of direction is not  
600 outside the scope of a trust director's power of direction  
601 merely because the exercise constitutes or may constitute a  
602 breach of trust.

603 (4) An exercise of a power of direction under which a trust  
604 director may release a trustee or another trust director from  
605 liability for breach of trust is not effective if:

606 (a) The breach involved the trustee's or other director's  
607 willful misconduct;

608 (b) The release was induced by improper conduct of the  
609 trustee or other director in procuring the release; or

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610 (c) At the time of the release, the trust director did not  
611 know the material facts relating to the breach.

612 (5) A directed trustee that has reasonable doubt about its  
613 duty under this section may apply to the court for instructions,  
614 with attorney fees and costs to be paid from assets of the trust  
615 as provided in this code.

616 (6) The terms of a trust may impose a duty or liability on  
617 a directed trustee in addition to the duties and liabilities  
618 under this part.

619 Section 21. Section 736.141, Florida Statutes, is created  
620 to read:

621 736.141 Duty to provide information.—

622 (1) Subject to s. 736.1411, relating to limitations on the  
623 duties of trustees or trust directors to monitor, inform, or  
624 advise on matters involving the other, a trustee shall provide  
625 information to a trust director to the extent the information is  
626 reasonably related to the powers or duties of the trust  
627 director.

628 (2) Subject to s. 736.1411, relating to limitations on the  
629 duties of trustees or trust directors to monitor, inform, or  
630 advise on matters involving the other, a trust director shall  
631 provide information to a trustee or another trust director to  
632 the extent the information is reasonably related to the powers  
633 or duties of the trustee or other trust director.

634 (3) A trustee that acts in reliance on information provided  
635 by a trust director is not liable for a breach of trust to the  
636 extent the breach resulted from the reliance, unless by so  
637 acting the trustee engages in willful misconduct.

638 (4) A trust director that acts in reliance on information

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639 provided by a trustee or another trust director is not liable  
640 for a breach of trust to the extent the breach resulted from the  
641 reliance, unless by so acting the trust director engages in  
642 willful misconduct.

643 (5) A trust director shall provide information within the  
644 trust director's knowledge or control to a qualified beneficiary  
645 upon a written request of a qualified beneficiary to the extent  
646 the information is reasonably related to the powers or duties of  
647 the trust director.

648 Section 22. Section 736.1411, Florida Statutes, is created  
649 to read:

650 736.1411 No duty to monitor, inform, or advise.—

651 (1) Notwithstanding s. 736.1409(1), relating to the duty of  
652 a directed trustee to take reasonable action when directed and  
653 to the release of liability for such action, unless the terms of  
654 a trust provide otherwise:

655 (a) A trustee does not have a duty to:

656 1. Monitor a trust director; or

657 2. Inform or give advice to a settlor, beneficiary,  
658 trustee, or trust director concerning an instance in which the  
659 trustee might have acted differently than the trust director.

660 (b) By taking an action described in paragraph (a), a  
661 trustee does not assume the duty excluded by paragraph (a).

662 (2) Notwithstanding s. 736.1408(1), relating to the  
663 fiduciary duty of a trust director, unless the terms of a trust  
664 provide otherwise:

665 (a) A trust director does not have a duty to:

666 1. Monitor a trustee or another trust director; or

667 2. Inform or give advice to a settlor, beneficiary,

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668 trustee, or another trust director concerning an instance in  
669 which the trust director might have acted differently than a  
670 trustee or another trust director.

671 (b) By taking an action described in paragraph (a), a trust  
672 director does not assume the duty excluded by paragraph (a).

673 Section 23. Section 736.1412, Florida Statutes, is created  
674 to read:

675 736.1412 Application to cotrustee.-

676 (1) The terms of a trust may provide for the appointment of  
677 more than one trustee but confer upon one or more of the  
678 trustees, to the exclusion of the others, the power to direct or  
679 prevent specified actions of the trustees.

680 (2) The excluded trustees shall act in accordance with the  
681 exercise of the power in the manner, and with the same duty and  
682 liability, as directed trustees with respect to a trust  
683 director's power of direction under s. 736.1409, relating to the  
684 duties and liabilities of a directed trustee; s. 736.141,  
685 relating to the duties of a trustee and trust director to  
686 provide and rely on information; and s. 736.1411, relating to  
687 limitations on the duties of trustees or trust directors to  
688 monitor, inform, or advise on matters involving the other.

689 (3) The trustee or trustees having the power to direct or  
690 prevent actions of the excluded trustees shall be liable to the  
691 beneficiaries with respect to the exercise of the power as if  
692 the excluded trustees were not in office and shall have the  
693 exclusive obligation to account to and to defend any action  
694 brought by the beneficiaries with respect to the exercise of the  
695 power.

696 Section 24. Section 736.1413, Florida Statutes, is created



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697 to read:

698 736.1413 Limitation of action against trust director.-

699 (1) An action against a trust director for breach of trust  
700 must be commenced within the same limitation period for an  
701 action for breach of trust against a trustee in a like position  
702 and under similar circumstances under s. 736.1008, relating to  
703 limitations on proceedings against trustees.

704 (2) A trust accounting or any other written report of a  
705 trustee or a trust director has the same effect on the  
706 limitation period for an action against a trust director for  
707 breach of trust that such trust accounting or written report  
708 would have under s. 736.1008, relating to limitations on  
709 proceedings against trustees, in an action for breach of trust  
710 against a trustee in a like position and under similar  
711 circumstances.

712 Section 25. Section 736.1414, Florida Statutes, is created  
713 to read:

714 736.1414 Defenses in action against trust director.-In an  
715 action against a trust director for breach of trust, the trust  
716 director may assert the same defenses a trustee in a like  
717 position and under similar circumstances could assert in an  
718 action for breach of trust against the trustee.

719 Section 26. Section 736.1415, Florida Statutes, is created  
720 to read:

721 736.1415 Jurisdiction over trust director.-

722 (1) By accepting appointment as a trust director of a trust  
723 subject to this part, the trust director submits to the personal  
724 jurisdiction of the courts of the state regarding any matter  
725 related to a power or duty of the trust director.

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726 (2) This section does not preclude other methods of  
727 obtaining jurisdiction over a trust director.

728 Section 27. Section 736.1416, Florida Statutes, is created  
729 to read:

730 736.1416 Office of trust director.—

731 (1) Unless the terms of a trust provide otherwise, a trust  
732 director shall be considered a trustee for purposes of the  
733 following:

734 (a) Role of court in trust proceedings under s. 736.0201.

735 (b) Proceedings for review of employment of agents and  
736 review of compensation of trustee and employees of a trust under  
737 s. 736.0206.

738 (c) Representation by holder of power of appointment under  
739 s. 736.0302(4), relating to how trustees with discretionary  
740 power to make trust distributions do not have a power of  
741 appointment for purposes of representing persons affected by  
742 such power.

743 (d) Prohibition on a trustee acting as a designated  
744 representative under s. 736.0306(2).

745 (e) Validation of power to select a beneficiary from an  
746 indefinite class under s. 736.0402(3).

747 (f) As to allowing application by the trust director for  
748 judicial modification of a trust when such modification is not  
749 inconsistent with the settlor's purpose under s. 736.04113, for  
750 judicial construction of provisions relating to federal taxes  
751 under s. 736.04114, for judicial modification of a trust when  
752 such modification is in the best interest of the beneficiaries  
753 under s. 736.04115, or for judicial modification or termination  
754 of an uneconomic trust under s. 736.0414(2), if the trust

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755 director is so authorized by the terms of the trust.

756 (g) Discretionary trusts and the effect of a standard under  
757 s. 736.0504, relating to special provisions regarding  
758 discretionary trusts.

759 (h) Trust assets not being subject to creditor claims by  
760 reason of discretionary powers granted to a trustee under s.  
761 736.0505(1)(c).

762 (i) A trustee's duty to pay trust obligations and expenses  
763 before paying obligations and expenses of the settlor's estate  
764 under s. 736.05053(4).

765 (j) Acceptance or declination of a trusteeship under s.  
766 736.0701.

767 (k) Requirement to give bond to secure performance under  
768 certain circumstances and court discretions relating to such  
769 bonds under s. 736.0702.

770 (l) Filling trustee vacancies and court appointment of an  
771 additional trustee or special fiduciary under s. 736.0704.

772 (m) Resignation of a trustee under s. 736.0705, including  
773 requirements, court authorizations, and remaining liabilities.

774 (n) Court removal of a trustee, including who may request a  
775 removal, under s. 736.0706, but not to give the trust director  
776 the power to request removal of a trustee.

777 (o) Reasonable compensation of a trustee or professional  
778 acting as a trustee under s. 736.0708.

779 (p) Entitlement of a trustee to reimbursement of expenses  
780 and liens to secure advances under s. 736.0709.

781 (q) Authority to pay costs or attorney fees without  
782 approval under s. 736.0802(10), if the trust director has a  
783 power of direction or, if the trust director has a further power

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784 to direct, the payment of such costs or attorney fees under s.  
785 736.1406(2), relating to the explicit power of direction granted  
786 to a trust director, or s. 736.1406(3)(a), relating to the  
787 implied additional power of a director in furtherance of an  
788 express power of direction.

789 (r) Limitations on a trustee's discretionary powers under  
790 s. 736.0814.

791 (s) Administration of trusts by trustees without regard to  
792 pending contests or proceedings, except as the court directs,  
793 under s. 736.08165.

794 (t) A trustee's obligation to invest in accordance with  
795 chapter 518 under s. 736.0901.

796 (u) The exception to the prudent investor rule for life  
797 insurance under s. 736.0902.

798 (v) Remedies available for a trustee breach of trust under  
799 s. 736.1001.

800 (w) Damages against a trustee for breach of trust under s.  
801 736.1002.

802 (x) A trustee's immunity from liability for loss or no  
803 profit under s. 736.1003 if there is no breach of trust.

804 (y) Court-awarded attorney fees and costs under s. 736.1004  
805 for breach of trust challenges.

806 (z) Fees available to a trustee's attorney for  
807 extraordinary service under s. 736.1007(5), court variance of  
808 compensation for a trustee's attorney under s. 736.1007(6), and  
809 agreements between a settlor and an attorney for fees to be  
810 provided to a trustee under s. 736.1007(7).

811 (aa) A trustee's immunity from liability for a breach of  
812 trust under s. 736.1009 if the trustee relied on the trust

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813 instrument terms.

814 (bb) Limitations on a trustee's liability for acting  
815 without knowledge of relevant events under s. 736.1010.

816 (cc) Limitations on a trustee's exculpation of liability  
817 under the terms of a trust under s. 736.1011.

818 (dd) The release of a trustee from liability with consent,  
819 the release or ratification of a beneficiary, and the  
820 limitations on such actions under s. 736.1012.

821 (ee) Limitations on imposing liability on a trustee for  
822 obligations of a settlor under s. 736.1014.

823 (2) If a person has not accepted a trust directorship under  
824 the terms of the trust or has accepted or declined a trusteeship  
825 under s. 736.0701 or a trustee, settlor, or a qualified  
826 beneficiary of the trust is uncertain whether such acceptance  
827 has occurred, a trustee, settlor, or a qualified beneficiary of  
828 the trust may make a written demand on a person designated to  
829 serve as a trust director, with a written copy to the trustees,  
830 to accept or confirm prior acceptance of the trust directorship  
831 in writing. A written acceptance, written acknowledgment of  
832 prior acceptance, or written declination of the trust  
833 directorship shall be delivered by the designated trust director  
834 within 60 days after receipt of such demand to all trustees,  
835 qualified beneficiaries, and the settlor if living.

836 Section 28. Part XV of chapter 736, Florida Statutes,  
837 consisting of ss. 736.1501-736.1512, Florida Statutes, is  
838 created and entitled the "Community Property Trust Act."

839 Section 29. Section 736.1501, Florida Statutes, is created  
840 to read:

841 736.1501 Short title.—This part may be cited as the

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842 "Community Property Trust Act."

843 Section 30. Section 736.1502, Florida Statutes, is created  
844 to read:

845 736.1502 Definitions.—Unless the context otherwise  
846 requires, as used in this part:

847 (1) "Community property" means the property and the  
848 appreciation of and income from the property owned by a  
849 qualified trustee of a community property trust during the  
850 marriage of the settlor spouses. The property owned by a  
851 community property trust pursuant to this part and the  
852 appreciation of and income from such property shall be deemed to  
853 be community property for purposes of general law.

854 (2) "Community property trust" means an express trust that  
855 complies with s. 736.1503 and is created on or after July 1,  
856 2021.

857 (3) "Decree" means a judgment or other order of a court of  
858 competent jurisdiction.

859 (4) "Dissolution" means either:

860 (a) Termination of a marriage by a decree of dissolution,  
861 divorce, annulment, or declaration of invalidity; or

862 (b) Entry of a decree of legal separation maintenance.

863 (5) "During marriage" means a period that begins at  
864 marriage and ends upon the dissolution of marriage or upon the  
865 death of a spouse.

866 (6) "Qualified trustee" means either:

867 (a) A natural person who is a resident of the state; or

868 (b) A company authorized to act as a trustee in the state.

869  
870 A qualified trustee's powers include, but are not limited to,

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871 maintaining records for the trust on an exclusive or a  
872 nonexclusive basis and preparing or arranging for the  
873 preparation of, on an exclusive or a nonexclusive basis, any  
874 income tax returns that must be filed by the trust.

875 (7) "Settlor spouses" means a married couple who  
876 establishes a community property trust pursuant to this part.

877 Section 31. Section 736.1503, Florida Statutes, is created  
878 to read:

879 736.1503 Requirements for community property trust.—An  
880 arrangement is a community property trust if one or both settlor  
881 spouses transfer property to a trust that:

882 (1) Expressly declares that the trust is a community  
883 property trust within the meaning of this part.

884 (2) Has at least one trustee who is a qualified trustee,  
885 provided that both spouses or either spouse also may be a  
886 trustee.

887 (3) Is signed by both settlor spouses consistent with the  
888 formalities required for the execution of a trust under this  
889 chapter.

890 (4) Contains substantially the following language in  
891 capital letters at the beginning of the community property trust  
892 agreement:

893  
894 THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY  
895 BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR  
896 RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD  
897 PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE  
898 COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND  
899 UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,

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900       THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER  
901       CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT  
902       THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND  
903       INDEPENDENT LEGAL ADVICE.

904  
905       Section 32. Section 736.1504, Florida Statutes, is created  
906 to read:

907       736.1504 Agreement establishing community property trust;  
908 amendments and revocation.-

909       (1) In the agreement establishing a community property  
910 trust, the settlor spouses may agree upon:

911       (a) The rights and obligations in the property transferred  
912 to the trust, notwithstanding when and where the property is  
913 acquired or located.

914       (b) The management and control of the property transferred  
915 into the trust.

916       (c) The disposition of the property transferred to the  
917 trust on dissolution, death, or the occurrence or nonoccurrence  
918 of another event, subject to ss. 736.1507 and 736.1508.

919       (d) Whether the trust is revocable or irrevocable.

920       (e) Any other matter that affects the property transferred  
921 to the trust and does not violate public policy or general law  
922 imposing a criminal penalty, or result in the property not being  
923 treated as community property under the laws of any  
924 jurisdiction.

925       (2) In the event of the death of a settlor spouse, the  
926 surviving spouse may amend a community property trust regarding  
927 the disposition of that spouse's one-half share of the community  
928 property, regardless of whether the agreement provides that the



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929 community property trust is irrevocable.

930 (3) A community property trust may be amended or revoked by  
931 the settlor spouses unless the agreement itself specifically  
932 provides that the community property trust is irrevocable.

933 (4) Notwithstanding any other provision of this code, the  
934 settlor spouses shall be deemed to be the only qualified  
935 beneficiaries of a community property trust until the death of  
936 one of the settlor spouses, regardless of whether the trust is  
937 revocable or irrevocable. After the death of one of the settlor  
938 spouses, the surviving spouse shall be deemed to be the only  
939 qualified beneficiary as to his or her share of the community  
940 property trust.

941 Section 33. Section 736.1505, Florida Statutes, is created  
942 to read:

943 736.1505 Classification of property as community property;  
944 enforcement; duration; management and control; effect of  
945 distributions.-

946 (1) Whether both, one, or neither is domiciled in the  
947 state, settlor spouses may classify any or all of their property  
948 as community property by transferring that property to a  
949 community property trust and providing in the trust that the  
950 property is community property pursuant to this part.

951 (2) A community property trust is enforceable without  
952 consideration.

953 (3) All property owned by a community property trust is  
954 community property under the laws of the state during the  
955 marriage of the settlor spouses.

956 (4) The right to manage and control property that is  
957 transferred to a community property trust is determined by the

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958 terms of the trust agreement.

959 (5) When property is distributed from a community property  
960 trust, the property shall no longer constitute community  
961 property within the meaning of this part, provided that  
962 community property as classified by a jurisdiction other than  
963 the state retains its character as community property to the  
964 extent otherwise provided by ss. 732.216-732.228.

965 Section 34. Section 736.1506, Florida Statutes, is created  
966 to read:

967 736.1506 Satisfaction of obligations.—Except as provided in  
968 s. 4, Art. X of the State Constitution:

969 (1) An obligation incurred by only one spouse before or  
970 during the marriage may be satisfied from that spouse's one-half  
971 share of a community property trust.

972 (2) An obligation incurred by both spouses during the  
973 marriage may be satisfied from a community property trust of the  
974 settlor spouses.

975 Section 35. Section 736.1507, Florida Statutes, is created  
976 to read:

977 736.1507 Death of a spouse.—Upon the death of a spouse,  
978 one-half of the aggregate value of the property held in a  
979 community property trust established by the settlor spouses  
980 reflects the share of the surviving spouse and is not subject to  
981 testamentary disposition by the decedent spouse or distribution  
982 under the laws of succession of the state. The other one-half of  
983 the value of that property reflects the share of the decedent  
984 spouse and is subject to testamentary disposition or  
985 distribution under the laws of succession of the state. Unless  
986 provided otherwise in the community property trust agreement,

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987 the trustee has the power to distribute assets of the trust in  
988 divided or undivided interests and to adjust resulting  
989 differences in valuation. A distribution in kind may be made on  
990 the basis of a non-pro rata division of the aggregate value of  
991 the trust assets, on the basis of a pro rata division of each  
992 individual asset, or by using both methods. The decedent's  
993 spouse's one-half share shall not be included in the elective  
994 estate.

995 Section 36. Section 736.1508, Florida Statutes, is created  
996 to read:

997 736.1508 Dissolution of marriage.—Upon the dissolution of  
998 the marriage of the settlor spouses, the community property  
999 trust shall terminate and the trustee shall distribute one-half  
1000 of the trust assets to each spouse, with each spouse receiving  
1001 one-half of each asset, unless otherwise agreed to in writing by  
1002 both spouses. For purposes of this act, s. 61.075 does not apply  
1003 to the disposition of the assets and liabilities held in a  
1004 community property trust.

1005 Section 37. Section 736.1509, Florida Statutes, is created  
1006 to read:

1007 736.1509 Right of child to support.—A community property  
1008 trust does not adversely affect the right of a child of the  
1009 settlor spouses to support that either spouse would be required  
1010 to give under the applicable laws of the settlor spouses' state  
1011 of domicile.

1012 Section 38. Section 736.151, Florida Statutes, is created  
1013 to read:

1014 736.151 Homestead property.—

1015 (1) Property that is transferred to or acquired subject to

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1016 a community property trust may continue to qualify or may  
1017 initially qualify as the settlor spouses' homestead within the  
1018 meaning of s. 4(a)(1), Art. X of the State Constitution and for  
1019 all purposes of general law, provided that the property would  
1020 qualify as the settlor spouses' homestead if title was held in  
1021 one or both of the settlor spouses' individual names.

1022 (2) The settlor spouses shall be deemed to have beneficial  
1023 title in equity to the homestead property held subject to a  
1024 community property trust for all purposes, including for  
1025 purposes of s. 196.031.

1026 Section 39. Section 736.1511, Florida Statutes, is created  
1027 to read:

1028 736.1511 Application of Internal Revenue Code; community  
1029 property classified by another jurisdiction.—For purposes of the  
1030 application of s. 1014(b)(6) of the Internal Revenue Code of  
1031 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a  
1032 community property trust is considered a trust established under  
1033 the community property laws of the state. Community property, as  
1034 classified by a jurisdiction other than this state, which is  
1035 transferred to a community property trust retains its character  
1036 as community property while in the trust. If the trust is  
1037 revoked and property is transferred on revocation of the trust,  
1038 the community property as classified by a jurisdiction other  
1039 than the state retains its character as community property to  
1040 the extent otherwise provided by ss. 732.216-732.228.

1041 Section 40. Section 736.1512, Florida Statutes, is created  
1042 to read:

1043 736.1512 Unenforceable trusts.—

1044 (1) A community property trust executed during marriage is

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1045 not enforceable if the spouse against whom enforcement is sought  
1046 proves that:

1047 (a) The trust was unconscionable when made;

1048 (b) The spouse against whom enforcement is sought did not  
1049 execute the community property trust agreement voluntarily; or

1050 (c) Before execution of the community property trust  
1051 agreement, the spouse against whom enforcement is sought:

1052 1. Was not given a fair and reasonable disclosure of the  
1053 property and financial obligations of the other spouse.

1054 2. Did not voluntarily sign a written waiver expressly  
1055 waiving right to disclosure of the property and financial  
1056 obligations of the other spouse beyond the disclosure provided.

1057 3. Did not have notice of the property or financial  
1058 obligations of the other spouse.

1059 (2) Whether a community property trust is unconscionable  
1060 shall be determined by a court as a matter of law.

1061 (3) A community property trust may not be deemed  
1062 unenforceable because the settlor spouses did not have separate  
1063 legal representation when executing the trust.

1064 Section 41. Paragraph (f) of subsection (5) of section  
1065 736.0802, Florida Statutes, is amended to read:

1066 736.0802 Duty of loyalty.—

1067 (5)

1068 (f)1. The trustee of a trust as defined in s. 731.201 may  
1069 request authority to invest in investment instruments described  
1070 in this subsection other than a qualified investment instrument,  
1071 by providing to all qualified beneficiaries a written request  
1072 containing the following:

1073 a. The name, telephone number, street address, and mailing

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1074 address of the trustee and of any individuals who may be  
1075 contacted for further information.

1076 b. A statement that the investment or investments cannot be  
1077 made without the consent of a majority of each class of the  
1078 qualified beneficiaries.

1079 c. A statement that, if a majority of each class of  
1080 qualified beneficiaries consent, the trustee will have the right  
1081 to make investments in investment instruments, as defined in s.  
1082 660.25(6), which are owned or controlled by the trustee or its  
1083 affiliate, or from which the trustee or its affiliate receives  
1084 compensation for providing services in a capacity other than as  
1085 trustee, that such investment instruments may include investment  
1086 instruments sold primarily to trust accounts, and that the  
1087 trustee or its affiliate may receive fees in addition to the  
1088 trustee's compensation for administering the trust.

1089 d. A statement that the consent may be withdrawn  
1090 prospectively at any time by written notice given by a majority  
1091 of any class of the qualified beneficiaries.

1092  
1093 A statement by the trustee is not delivered if the statement is  
1094 accompanied by another written communication other than a  
1095 written communication by the trustee that refers only to the  
1096 statement.

1097 2. For purposes of paragraph (e) and this paragraph:

1098 a. "Majority of the qualified beneficiaries" means:

1099 (I) If at the time the determination is made there are one  
1100 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~  
1101 ~~736.0103(16)(c)~~, at least a majority in interest of the  
1102 beneficiaries described in s. 736.0103(19)(a) ~~s.~~

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1103 ~~736.0103(16)(a)~~, at least a majority in interest of the  
 1104 beneficiaries described in s. 736.0103(19)(b) ~~s.~~  
 1105 ~~736.0103(16)(b)~~, and at least a majority in interest of the  
 1106 beneficiaries described in s. 736.0103(19)(c) ~~s.~~  
 1107 ~~736.0103(16)(c)~~, if the interests of the beneficiaries are  
 1108 reasonably ascertainable; otherwise, a majority in number of  
 1109 each such class; or

1110 (II) If there is no beneficiary as described in s.  
 1111 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least a majority in  
 1112 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~  
 1113 ~~736.0103(16)(a)~~ and at least a majority in interest of the  
 1114 beneficiaries described in s. 736.0103(19)(b) ~~s.~~  
 1115 ~~736.0103(16)(b)~~, if the interests of the beneficiaries are  
 1116 reasonably ascertainable; otherwise, a majority in number of  
 1117 each such class.

1118 b. "Qualified investment instrument" means a mutual fund,  
 1119 common trust fund, or money market fund described in and  
 1120 governed by s. 736.0816(3).

1121 c. An irrevocable trust is created upon execution of the  
 1122 trust instrument. If a trust that was revocable when created  
 1123 thereafter becomes irrevocable, the irrevocable trust is created  
 1124 when the right of revocation terminates.

1125 Section 42. Paragraph (a) of subsection (2) of section  
 1126 736.08125, Florida Statutes, is amended to read:

1127 736.08125 Protection of successor trustees.—

1128 (2) For the purposes of this section, the term:

1129 (a) "Eligible beneficiaries" means:

1130 1. At the time the determination is made, if there are one  
 1131 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~

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1132 ~~736.0103(16)(e)~~, the beneficiaries described in s.  
1133 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

1134 2. If there is no beneficiary as described in s.  
1135 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described  
1136 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1137 Section 43. Paragraph (d) of subsection (9) of section  
1138 738.104, Florida Statutes, is amended to read:

1139 738.104 Trustee's power to adjust.—

1140 (9)

1141 (d) For purposes of subsection (8) and this subsection, the  
1142 term:

1143 1. "Eligible beneficiaries" means:

1144 a. If at the time the determination is made there are one  
1145 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~

1146 ~~736.0103(16)(e)~~, the beneficiaries described in s.  
1147 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or

1148 b. If there is no beneficiary described in s.  
1149 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described  
1150 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1151 2. "Super majority of the eligible beneficiaries" means:

1152 a. If at the time the determination is made there are one  
1153 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~

1154 ~~736.0103(16)(e)~~, at least two-thirds in interest of the  
1155 beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~  
1156 or two-thirds in interest of the beneficiaries described in s.  
1157 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, if the interests of the

1158 beneficiaries are reasonably ascertainable; otherwise, it means  
1159 two-thirds in number of either such class; or

1160 b. If there is no beneficiary described in s.



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1161 736.0103(19)(c) ~~s. 736.0103(16)(c)~~, at least two-thirds in  
1162 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~  
1163 ~~736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries  
1164 described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the  
1165 interests of the beneficiaries are reasonably ascertainable,  
1166 otherwise, two-thirds in number of either such class.

1167 Section 44. Subsection (1) of section 744.3679, Florida  
1168 Statutes, is amended to read:

1169 744.3679 Simplified accounting procedures in certain  
1170 cases.—

1171 (1) In a guardianship of property, when all property assets  
1172 of the estate is ~~are~~ in designated depositories under s. 69.031  
1173 and the only transactions that occur in that account are  
1174 interest accrual, deposits from a settlement, or financial  
1175 institution service charges, the guardian may elect to file an  
1176 accounting consisting of:

1177 (a) The original or a certified copy of the year-end  
1178 statement of the ward's account from the financial institution;  
1179 and

1180 (b) A statement by the guardian under penalty of perjury  
1181 that the guardian has custody and control of the ward's property  
1182 as shown in the year-end statement.

1183 Section 45. The Division of Law Revision is directed to  
1184 replace the phrase "the effective date of this section" wherever  
1185 it occurs in this act with the date those sections become law.

1186 Section 46. If any provision of this act or the application  
1187 thereof to any person or circumstance is held invalid, the  
1188 invalidity does not affect other provisions or applications of  
1189 this act which can be given effect without the invalid provision

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1190 or application, and to this end the provisions of this act are  
1191 severable.

1192       Section 47. Except as otherwise expressly provided in this  
1193 act and except for this section, which shall take effect upon  
1194 this act becoming a law, this act shall take effect July 1,  
1195 2021.