

THE NEW FLORIDA TRUST CODE

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I. Effective July 1, 2007

--generally applies to all trusts whether created before or after effective date

II. Sources of Florida Trust Code

A. Chapter 737 (40%) – old chapter on Trust Administration

B. Uniform Trust Code (60%) – about 1/3 of UTC provisions were customized for Florida

III. Default and Mandatory Rules

--terms of trust can override provisions of Trust Code except for items listed in § 736.0105(2)

IV. Definitions

1) Beneficiary

2) Qualified Beneficiary

3) Knowledge

V. Representation in New Florida Trust Code

A. Representation:

1. Holder of power of appointment may represent and bind takers in default
--can be general or special, inter vivos or testamentary

2. Guardian of Property may represent ward

3. Attorney-in-fact may bind principal

4. Personal representative may bind estate beneficiaries

5. Parent may bind unborn or minor child

B. Designated Representative:

1. Grantor may designate someone to represent one or more beneficiaries
2. Restrictions

VI. Trust Creation

1. Testamentary aspects of revocable trust are void unless trust executed with formalities required for will in Florida.
2. Capacity needed to create, amend or add property to a revocable trust is the same as that required for execution of will.
3. Trusts are revocable unless trust expressly says it is irrevocable.

VII. Trust Revocation or Amendment

- 1) Under the terms of trust
- 2) By later will or codicil specifically devising property that would have otherwise passed according to terms of trust
- 3) Joint trust – either settler may revoke or amend
- 4) By attorney-in-fact
- 5) By guardian

VIII. Principal Place of Administration

- 1) Trustee can transfer with 60 days notice to qualified beneficiaries

IX. Trust Modification

A. Non-Judicial Modification

1. Agreement of Trustee and All Qualified Beneficiaries
2. Uneconomic Trusts: Trustee may terminate trust \leq \$50,000 without court approval
3. Combination and division of trust by trustee

B. Judicial Modification

1. Uneconomic Trust

2. Not inconsistent with settlor's purpose
3. Best interests of beneficiaries
4. Correcting Mistakes
5. To achieve grantor's tax objectives
6. Charitable Trusts

X. Creditors Rights

1. Third Party Trusts

- a. No spendthrift provision – beneficiary's creditor can only reach mandatory distributions; can't reach discretionary distributions and can't compel discretionary distributions even if beneficiary is also trustee
- b. Spendthrift provision – must retain both voluntary and involuntary transfer of a beneficiary's interest to be valid

--creditor can't reach beneficiary's interest in spendthrift trust

--exceptions: 1) delinquent alimony or child support

- 2) judgment creditor who has provided services for protection of beneficiary's interest in trust

2. Self-settled Trusts

- 1) not protected from settlor's creditors
- 2) applies to holder of power of withdrawal

XI. Trust Contests

1. not during settlor's life (except by guardian with prior court approval)
2. after death: 6 months after receiving notice from trustee

XII. Trustees

- A) Declination
- B) Resignation
 - 1) with court approval

- 2) without court approval – 30 days notice
- C) Multiple Trustees
- 1) Vacancy
 - 2) Majority Rule
- D) Removal – grounds
- 1) breach of trust
 - 2) lack of cooperation among co-trustees
 - 3) unfitness
 - 4) substantial change in circumstances or requested by all qualified beneficiaries
- E) Compensation
- 1) “reasonable”
 - 2) controlled by terms of trust but may be adjusted
- F) Duties
- 1) Loyalty: corporate trustee can invest in investments owned or controlled by trustee or affiliate or from which trustee or affiliate receives compensation
 - 2) Inform and account to qualified beneficiaries (representation rules apply)
 - 3) Invest prudently – trustee not liable for depreciation in value of trust property or for not having made a profit
 - 4) Delegation
- G) Actions Against Trustee - Limitations
- 1) Trust Accounting and Limitation Notice: 6 months
 - 2) Trust Accounting, no Limitation Notice: 4 years
 - 3) No Trust Accounting, no Limitation Notice: 4 years

H) Exculpatory Clauses – Restricted

XIII. Rules of Construction

1) Cy Pres Doctrine

2) Settlor and charities now have standing to enforce

XIV. Factors to Consider in Drafting Trust

A. Revocable or Irrevocable?

B. Should attorney-in-fact have power to amend?

C. Which Rule Against Perpetuities?

D. Discretionary or mandatory distributions

E. Appointment of Designated Representative

XV. Factors to Consider in Administering Trust

A) Notify beneficiaries at death of settlor of revocable trust

B) Use representatives to receive accountings

C) Delegation of investment functions