

1984

Session Law 84-031

Florida Senate & House of Representatives

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Florida Legislature

History of Legislation 1984 Regular Session



prepared by:

Joint Legislative Management Committee

Legislative Information Division
Capitol Building, Room 826 — 488-4371

occupancy certificate issuance, etc Amends Ch. 553; repeals 471 005(8)
 Effective Date 06/29/84
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Economic, Community and Consumer Affairs
 04/03/84 SENATE Introduced, referred to Economic, Community and
 Consumer Affairs -SJ 00036
 04/13/84 SENATE Extension of time granted Committee Economic, Community
 and Consumer Affairs, On Committee agenda-- ECCA,
 04/17/84, 9:00 am, Rm H
 04/17/84 SENATE Comm Report CS placed on Calendar by Economic,
 Community and Consumer Affairs -SJ 00158
 04/24/84 SENATE CS read first time -SJ 00159
 05/24/84 SENATE Placed on Special Order Calendar
 05/28/84 SENATE Placed on Special Order Calendar, CS passed as amended,
 YEAS 34 NAYS 0 -SJ 00486
 05/29/84 HOUSE In Messages
 05/30/84 HOUSE Received, placed on Calendar -HJ 00850
 05/31/84 HOUSE Placed on Special Order Calendar, Substituted for CS/HB
 880, Read second time; Read third time, Passed, YEAS
 114 NAYS 0 -HJ 00989
 05/31/84 Ordered enrolled -SJ 00625
 06/18/84 SENATE Signed by Officers and presented to Governor
 06/29/84 Approved by Governor Chapter No 84-365

S 0400 GENERAL BILL by Fox (Identical H 0547)
Crimes Compensation, provides for compensation under Fla Crimes
 Compensation Act for driving offenses involving alcohol or controlled
 substances & for victims of spouse abuse. Amends 960 03, 04
 Effective Date 10/01/84.
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Judiciary-Criminal, Appropriations
 04/03/84 SENATE Introduced, referred to Judiciary-Criminal,
 Appropriations -SJ 00036
 04/13/84 SENATE On Committee agenda-- Judiciary-Criminal, 04/17/84,
 9 00 am, Rm C
 04/16/84 SENATE Extension of time granted Committee Judiciary-Criminal
 04/17/84 SENATE Comm Report Favorable with amend by
 Judiciary-Criminal -SJ 00149
 04/18/84 SENATE Now in Appropriations -SJ 00149
 04/27/84 SENATE Extension of time granted Committee Appropriations
 05/10/84 SENATE Extension of time granted Committee Appropriations
 05/23/84 SENATE Extension of time granted Committee Appropriations
 06/01/84 SENATE Died in Committee on Appropriations

S 0401 GENERAL BILL by Hair (Identical H 1144)
Educators, provides for liability of trustees re certain land trusts,
 authorizes certain trustees to invest in money market mutual funds,
 mutual funds, & common trust funds, authorizes guardian of ward to
 invest certain funds in money market mutual funds, etc Amends Chs 689,
 737 744 Effective Date Upon becoming law
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Judiciary-Civil
 04/03/84 SENATE Introduced, referred to Judiciary-Civil -SJ 00036
 04/13/84 SENATE Extension of time granted Committee Judiciary-Civil
 04/16/84 SENATE On Committee agenda-- Judiciary-Civil, 04/18/84, 2 00
 pm, Rm B
 04/18/84 SENATE Comm Report Favorable, placed on Calendar by
 Judiciary-Civil -SJ 00149
 05/01/84 SENATE Placed on Special Order Calendar, Iden /Sim House Bill
 substituted; Laid on table under Rule,
 Iden /Sim /Compare Bill passed, refer to HB 1144 (Ch
 84-31) -SJ 00200

S 0402 GENERAL BILL by Myers (Compare Eng/H 1014)
Osteopathic Physicians, provides that Osteopathic Medical Examiners
 Board shall approve hospitals at which osteopathic physicians complete
 required resident internship Amends 459 006 Effective Date
 Upon becoming law
 02/27/84 SENATE Prefiled
 CONTINUED ON NEXT PAGE

03/08/84 SENATE Referred to Economic, Community and Consumer Affairs
 04/03/84 SENATE Introduced, referred to Economic, Community and
 Consumer Affairs -SJ 00037
 04/13/84 SENATE Extension of time granted Committee Economic, Community
 and Consumer Affairs; On Committee agenda-- ECCA,
 04/17/84, 9:00 am, Rm H
 04/17/84 SENATE Comm Report Favorable with amend, placed on Calendar
 by Economic, Community and Consumer Affairs -SJ 00149
 05/01/84 SENATE Placed on Special Order Calendar
 05/08/84 SENATE Placed on Special Order Calendar; Iden./Sim House Bill
 substituted, Laid on table under Rule,
 Iden /Sim /Compare Bill passed, refer to HB 1014 (Ch
 84-39) -SJ 00241

S 0403 GENERAL BILL by Fox (Identical H 0337)
School Food Service Program, requires annual state funding of school
 food service personnel incentive program in district school system at
 specified rate Amends 228 195 Effective Date 07/01/84
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Education, Appropriations
 04/03/84 SENATE Introduced, referred to Education, Appropriations
 -SJ 00037
 04/10/84 SENATE On Committee agenda-- Education, 04/12/84, 9 30 am, Rm
 A
 04/12/84 SENATE Comm Report Favorable by Education -SJ 00120
 04/13/84 SENATE Now in Appropriations -SJ 00120
 04/27/84 SENATE Extension of time granted Committee Appropriations
 05/10/84 SENATE Extension of time granted Committee Appropriations
 05/23/84 SENATE Extension of time granted Committee Appropriations
 06/01/84 SENATE Died in Committee on Appropriations

S 0404 GENERAL BILL by Fox and others (Compare Eng/H 0134, Eng/H 0542, H 0787,
 Eng/S 0138, S 0218, S 0632, S 0688)
Sexual Battery, clarifies provisions re age of victim, deletes provision
 re coercion of victim, prohibits specified acts by persons in familial/
 custodial/official authority over a child, provides penalties, requires
 reporting of a sexual battery/attempted sexual battery, etc Amends Ch.
 794 775 15 Effective Date: 10/01/84.
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Judiciary-Criminal
 04/03/84 SENATE Introduced, referred to Judiciary-Criminal SJ 00037,
 On Committee agenda-- Judiciary-Criminal, 04/04/84,
 9 00 am, Rm C
 04/04/84 SENATE Comm Report Favorable, placed on Calendar by
 Judiciary-Criminal -SJ 00087
 05/01/84 SENATE Placed on Special Order Calendar, Amendment pending
 -SJ 00202
 05/08/84 SENATE Placed on Special Order Calendar, Passed as amended,
 YEAS 38 NAYS 0 -SJ 00241
 05/10/84 HOUSE In Messages
 05/14/84 HOUSE Received, referred to Criminal Justice -HJ 00372
 06/01/84 HOUSE Died in Committee, Iden /Sim /Compare Bill passed,
 refer to SB 138 (Ch 84-86)

S 0405 GENERAL BILL by Fox (Similar CS/H 0234, Compare Eng/S 0153)
School Personnel, expands personal leave days for school personnel.
 Amends 231 40 Effective Date 07/01/84.
 02/27/84 SENATE Prefiled
 03/08/84 SENATE Referred to Education, Personnel, Retirement and
 Collective Bargaining, Appropriations
 04/03/84 SENATE Introduced, referred to Education, Personnel,
 Retirement and Collective Bargaining, Appropriations
 -SJ 00037, On Committee agenda-- Education, 04/05/84,
 9 00 am, Rm A
 04/05/84 SENATE Comm Report Favorable by Education -SJ 00088
 04/06/84 SENATE Now in Personnel, Retirement and Collective Bargaining
 -SJ 00088
 04/09/84 SENATE On Committee agenda-- Personnel, R & C B. Temporarily
 postponed
 CONTINUED ON NEXT PAGE

07/10/84 16 32

HISTORY OF HOUSE BILLS

PAGE 375

04/23/84 1.15pm, 04/25/84
 04/27/84 HOUSE Comm Report Favorable by Community Affairs -HJ 00277, Now in Finance & Taxation
 05/01/84 HOUSE On Committee agenda-- For subreferral, 21 HOB, 8 am, 05/03--POSTPONED
 05/18/84 HOUSE Withdrawn from Finance & Taxation -HJ 00471, Placed on Calendar
 05/25/84 HOUSE Placed on Local Calendar, Read second time, Amendment adopted, Read third time, Passed as amended, YEAS 111 NAYS 0 -HJ 00687
 05/28/84 SENATE In Messages
 05/29/84 SENATE Received, referred to Rules and Calendar -SJ 00490, Considered, placed on Local Calendar by Rules and Calendar -SJ 00490, Passed, YEAS 34 NAYS 0 -SJ 00532
 05/29/84 Ordered enrolled
 05/31/84 HOUSE Signed by Officers and presented to Governor -HJ 01045
 06/16/84 Became Law without Governor's Signature Chapter No 84-460

H 1143 LOCAL BILL by Crady (Similar S 0849)
Baker Co./Hospital Authority, provides for election of directors of authority & expands number of directors, provides salary, etc
 Effective Date Upon becoming law
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Placed in Rules and Calendar, pending introduction -HJ 00186
 04/16/84 HOUSE Introduced, referred to Community Affairs -HJ 00215
 04/23/84 HOUSE On Committee agenda-- Community Affairs, 314 HOB, 1.15pm, 04/25/84
 05/09/84 HOUSE Comm Report Favorable, placed on Calendar by Community Affairs -HJ 00352
 05/10/84 HOUSE Placed on Local Calendar
 05/14/84 HOUSE Read second time, Amendments adopted, Read third time, Passed as amended, YEAS 116 NAYS 0 -HJ 00398; Immediately certified
 05/15/84 SENATE In Messages
 05/21/84 SENATE Received, referred to Rules and Calendar -SJ 00338
 05/22/84 SENATE Considered, placed on Local Calendar by Rules and Calendar -SJ 00339
 05/23/84 SENATE Substituted for SB 849; Passed, YEAS 37 NAYS 0 -SJ 00354
 05/24/84 SENATE Reconsidered -SJ 00411, Failed to pass, YEAS 0 NAYS 29 -SJ 00412

H 1144 GENERAL BILL by Judiciary (Identical S 0401)
Fiduciaries, provides for liability of trustees re certain land trusts; authorizes certain trustees to invest in money market mutual funds, mutual funds, & common trust funds, authorizes guardian of ward to invest certain funds in money market mutual funds, etc Amends Chs 689, 737, 744 Effective Date 05/15/84
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Introduced, placed on Calendar -HJ 00166
 04/16/84 HOUSE Placed on Special Order Calendar
 04/17/84 HOUSE Read second time -HJ 00224
 04/19/84 HOUSE Read third time, Passed, YEAS 108 NAYS 0 -HJ 00232
 04/23/84 SENATE In Messages
 04/27/84 SENATE Received, referred to Judiciary-Civil -SJ 00188
 05/01/84 SENATE Withdrawn from Judiciary-Civil, Substituted for SB 401, Passed, YEAS 32 NAYS 0 -SJ 00200
 05/02/84 Ordered enrolled
 05/08/84 HOUSE Signed by Officers and presented to Governor -HJ 00336
 05/15/84 Approved by Governor Chapter No 84-31 -HJ 00444

H 1145 GENERAL BILL/CS by Governmental Operations, Higher Education (Compare S 0736)

Group Insurance, defines "local governmental unit", authorizes such units to provide certain types of insurance for officers & employees & their dependents, to pay for certain physical exam for such officers &

CONTINUED ON NEXT PAGE

07/10/84 16 32

HISTORY OF HOUSE BILLS

PAGE 376

employees & to enter into risk management programs therefor, etc Amends 112 08, Effective Date 06/24/84
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Introduced, referred to Governmental Operations -HJ 00166, Subreferred to Subcommittee on Executive Reorganization
 04/13/84 HOUSE On Committee agenda-- Subcomm, Gov Op, 415 HOB, 1 15 pm, 04/17
 04/17/84 HOUSE On Committee agenda-- Gov Op, 214 C, 3 30pm, 04/19/84
 04/26/84 HOUSE Comm Report, CS placed on Calendar by Governmental Operations -HJ 00266
 05/31/84 HOUSE Placed on Special Order Calendar
 06/01/84 HOUSE CS read first and second times, Amendments adopted, Read third time; CS passed as amended, YEAS 110 NAYS 0 -HJ 01102
 06/01/84 SENATE In Messages, Received, Passed, YEAS 33 NAYS 0 -SJ 00932
 06/01/84 Ordered enrolled
 06/14/84 HOUSE Signed by Officers and presented to Governor
 06/24/84 Approved by Governor Chapter No 84-307

H 1146 GENERAL BILL by Higher Education (Compare S 0735, CS/S 0923)
Community Colleges, authorizes community college district boards of trustees to apply salary schedules adopted for fiscal year for payment of all services rendered subsequent to July 1 of that fiscal year Amends 215,425 Effective Date Upon becoming law
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Introduced, referred to Appropriations -HJ 00166
 06/01/84 HOUSE Died in Committee, Iden./Sim /Compare Bill passed, refer to CS/SB 923 (Ch 84-336)

H 1147 GENERAL BILL by Higher Education (Compare S 0735)
Community Colleges; authorizes each community college district board of trustees to participate in educational consortia Amends 240 319 Effective Date: Upon becoming law
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Introduced, referred to Appropriations -HJ 00166
 05/17/84 HOUSE Withdrawn from Appropriations -HJ 00459, Placed on Calendar
 05/24/84 HOUSE Placed on Special Order Calendar
 05/29/84 HOUSE Read second time, Read third time, Passed, YEAS 102 NAYS 0 -HJ 00755
 05/29/84 SENATE In Messages
 05/30/84 SENATE Received, referred to Education -SJ 00540
 06/01/84 SENATE Died in Committee on Education

H 1148 GENERAL BILL/CS by Commerce, Higher Education (Compare H 0235, H 0288, CS/H 0764, CS/S 0199, S 0591, S 0735, S 0845, CS/S 0923)
Community Colleges, authorizes community colleges to purchase retirement annuities for certain employees & provides restrictions, authorizes boards of trustees to contract for self-insurance services, provides a special account for paying claims, etc Creates 240 344, amends 240 363 Effective Date: Upon becoming law
 04/09/84 HOUSE Filed
 04/10/84 HOUSE Introduced, referred to Commerce, Appropriations -HJ 00166
 04/16/84 HOUSE On Committee agenda-- Commerce, 21 HOB, 1 15 pm, 04/18/84
 04/23/84 HOUSE Comm. Report, CS by Commerce -HJ 00252, Now in Appropriations
 06/01/84 HOUSE Died in Committee, Iden./Sim./Compare Bill passed, refer to CS/HB 764 (Ch. 84-210) & CS/SB 923 (Ch 84-336)

H 1149 RESOLUTION by Crotty, Grindie
Veterans, requests immediate attention by state & federal agencies to needs of ever-increasing veteran population in Florida
 04/09/84 HOUSE Filed, Introduced, placed on Calendar, Read second

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9-632-84

See HB
SB 401
HAIR

A bill to be entitled

An act relating to fiduciaries; amending s.
689.071, F.S., providing for the liability of
trustees with respect to certain land trusts;
amending s. 737 402, F.S., authorizing certain
trustees to invest in money market mutual
funds, mutual funds, and common trust funds;
amending s. 744.341, F.S., authorizing the
court to direct that the guardian take
possession of less than all of the ward's
property in a guardianship case; amending s.
744.444, F.S., authorizing the guardian of a
ward to invest certain funds in money market
mutual funds; providing an effective date

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Be It Enacted by the Legislature of the State of Florida.

Section 1. Subsections (5) and (6) of section 689 071,
Florida Statutes, are renumbered as subsections (6) and (7),
respectively, and a new subsection (5) is added to said
section to read:

689.071 Land trusts transferring interests in real
estate; ownership vests in trustee.--

(5) In addition to any other limitations on personal
liability existing pursuant to statute or otherwise, the
provisions of s. 737.306 shall apply to the trustee of a land
trust created pursuant to this section.

Section 2. Section 737.306, Florida Statutes, reads:

737.306 Personal liability of trustee to third
parties.--

1 (1) Unless otherwise provided in the contract, a
2 trustee is not personally liable on contracts, except
3 contracts for attorneys' fees, properly entered into in his
4 fiduciary capacity in the course of administration of the
5 trust estate unless he fails to reveal his representative
6 capacity and identify the trust estate in the contract.

7 (2) A trustee is personally liable for obligations
8 arising from ownership or control of property of the trust
9 estate or for torts committed in the course of administration
10 of the trust estate only if he is personally at fault.

11 (3) Claims based on contracts, except contracts for
12 attorneys' fees, entered into by a trustee in his fiduciary
13 capacity, on obligations arising from ownership or control of
14 the trust estate, or on torts committed in the course of trust
15 administration may be asserted against the trust estate by
16 proceeding against the trustee in his fiduciary capacity,
17 whether or not the trustee is personally liable.

18 (4) Issues of liability between the trust estate and
19 the trustee individually may be determined in a proceeding for
20 accounting, surcharge, or indemnification, or in any other
21 appropriate proceeding.

22 Section 3. Paragraph (e) of subsection (2) of section
23 737 402, Florida Statutes, is amended to read:

24 737.402 Powers of trustees conferred by this part.--

25 (2) Unless otherwise provided in the trust instrument,
26 a trustee has the power:

27 (e) To acquire an undivided interest in a trust asset
28 in which the trustee holds an undivided interest in any trust
29 capacity, including, but not limited to, money market mutual
30 funds, mutual funds, and common trust funds.

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1 Section 4. Present subsection (2) of section 744 341,
2 Florida Statutes, is renumbered as subsection (3) and amended,
3 and a new subsection (2) is added to said section, to read:

4 744.341 Voluntary guardianship.--

5 (2) If requested in the petition for appointment of a
6 guardian brought under this section, the court may direct the
7 guardian to take possession of less than all of the ward's
8 property and of the rents, income, issues, and profits from
9 it. In such case, the court shall specify in its order the
10 property to be included in the guardianship estate, and the
11 duties and responsibilities of the guardian appointed under
12 this section shall extend only to such property.

13 (3) ~~(2)~~ Except as provided in subsection (2), any
14 guardian appointed under this section shall have the same
15 duties and responsibilities as are provided by law as to
16 guardians of property generally

17 Section 5. Subsection (10) of section 744 444, Florida
18 Statutes, is amended to read:

19 744.444 Power of guardian without court approval.--
20 Without obtaining court approval, a guardian of the property
21 may:

22 (10) Deposit or invest liquid assets of the estate,
23 including moneys received from the sale of other assets, in
24 federally insured interest-bearing accounts, readily
25 marketable secured loan arrangements, money market mutual
26 funds, or other prudent investments. The guardian may redeem
27 or sell such deposits or investments to pay the reasonable
28 living expenses of the ward as provided herein.

29 Section 6. This act shall take effect upon becoming a
30 law.

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HOUSE SUMMARY

Provides that the provisions of law governing the general personal liability of trustees to third parties shall apply with respect to the trustee of a land trust conferring interest in real estate.

Authorizes trustees to invest in money market mutual funds, mutual funds, and common trust funds.

Provides that the court, in a guardianship proceeding, may direct that the guardian take possession of less than all of the ward's property.

Authorizes guardians to invest in money market mutual funds without court approval.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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Series 16

ANALYST

STAFF DIRECTOR

REFERENCE

ACTION

Slaymaker JS	Alberdi	1. JCI	Fav
		2. _____	_____
		3. _____	_____

SUBJECT:

BILL NO. AND SPONSOR.

Fiduciaries

SB 401 by
Senator Hair

I. SUMMARY:

A. Present Situation:

In Taylor v. Richmond's New Approach Association, Inc., 351 So. 2d 1094 (Fla. 2nd DCA 1977) the court held that the limits on the personal liability of trustees contained in s. 737.306, F.S., apply only to trustees of classical testamentary or inter vivos trusts and not to land trust trustees. Section 737.306 provides that a trustee is not personally liable in contract if he reveals his representative capacity and identifies the trust. In tort, the trustee is not personally liable unless he is personally at fault or is acting outside the scope of his authority.

Section 737.402 provides that a trustee shall have the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, and identifies certain powers. Subsection (2)(e) provides that, unless otherwise provided in the trust instrument, a trustee has the power to acquire an undivided interest in a trust asset in which the trustee holds an undivided interest in any trust capacity. This permits a trustee to compile sums from several trusts for which he is trustee and, rather than make many small investments for each trust, may combine the sums and, as trustee, make one larger investment.

Section 744.341 relating to voluntary guardianship provides that a person who is mentally competent but incapable of the care, custody and management of his estate by reason of age or physical infirmity may voluntarily petition the court to appoint a guardian of his estate. Subsection (2) imposes the same duties and responsibilities on the guardian appointed under this section as are imposed on a guardian of property where the ward is incompetent. Thus, pursuant to s. 744.377, the guardian is required to take possession of all of the ward's property and be responsible therefor.

Section 744.444(10) provides that a guardian may, without obtaining court approval, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments. Section 744.441(12) requires court approval before a guardian may, among other things, sell any personal property of the estate. The prudent investments which may be made pursuant to s. 744.444(10) without court approval cannot be redeemed or sold without court approval.

B. Effect of Proposed Changes:

The bill would provide trustees of land trusts with the limitations on liability of s. 737.306. In a contract action, the trustee would not be personally liable if he had revealed that he was acting in the capacity of trustee and he had identified the trust. In tort, the trustee would not be personally liable unless he was personally at fault or acting outside the scope of his authority as trustee.

The bill amends s. 737.402(2)(e) which clarifies the power of the trustee to acquire an undivided interest in a trust asset in which the trustee holds an undivided interest in any trust capacity to include but not be limited to money market mutual funds, mutual funds, and common trust funds.

Section 4 of the bill amends s. 744.341 to provide that in a voluntary guardianship the court may direct the guardian to take possession of less than all of the ward's property. The duties and responsibilities of the guardian would extend only to such property.

Section 744.444(10) is amended to provide that money market mutual funds are to be considered prudent investments in which assets of the guardianship estate may be invested without court approval. This subsection is further amended to provide that investments allowed therein may be redeemed or sold, but only to pay the reasonable living expenses of the ward.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

It is possible that the bill will reduce the cost of performing trustee or guardianship services and therefore permit more beneficial investment of the corpus of trusts or guardianship estates.

B. Government:

None.

III. COMMENTS:

House Bill 1144 which is identical to this bill was introduced by the House Judiciary Committee and has been placed on the House Special Order Calendar.

IV. AMENDMENTS:

None.

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Draft #1

A bill to be entitled

An act relating to fiduciaries;

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

Section 1. Subsection (5) of section 689.071, Florida Statutes, is created and subsections (5) and (6) are renumbered as subsections (6) and (7), to read:

689.071 Land trusts transferring interests in real estate; ownership vests in trustee.--

(5) In addition to any other limitations on personal liability existing pursuant to statute or otherwise, the provisions of s. 737.306, shall apply to the trustee of a land trust created pursuant to this section.

(6)~~(5)~~ This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(7)~~(6)~~ This act shall not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

Section 2. Subsection (2) of section 717.06, Florida Statutes, is created and subsections (2) and (3) of said section are renumbered as subsections (3) and (4) to read:

717.06 Undistributed dividends, distribution of business associations, stock or certificate of ownership.--

(1) Any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association

Draft #1

concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) The records of the business association indicate that the last known address of the apparent owner is in this state.

(b) No address of the apparent owner appears on the records of the business association and:

1. The last known address of the apparent owner is in this state; or

2. The business association is domiciled in this state and has not previously paid the property to the state of the last known address of the apparent owner.

(c) The last known address of the apparent owner, as shown on the records of the holder, is in a state designated by regulation adopted by the department as a state that does not provide by law for the escheat or other disposition of such property to the state, and the business association is domiciled in this state.

(d) The last known address of the apparent owner, as shown on the records of the business association, is in a foreign nation and the business association is domiciled in this state.

(2) Notwithstanding the provisions of subsection (1) hereof, in the case of an instrument issued in bearer form, any dividend, profit, distribution, interest, payment on principal, or other sum held owing shall not be presumed abandoned until 7 years after the date the principal of the instrument becomes fully payable, by maturity or otherwise.

(3)~~(2)~~ When any dividend, profit, distribution, interest, payment on principal, or other sum under subsection (1) is presumed abandoned, the intangible interest in the

Draft #1

business association, as evidenced by the stock records or membership records of the association, pursuant to which the sum in subsection (1) became owing to the owner, shall be presumed abandoned at the same time the sum is presumed abandoned. With respect to such interest, the business association shall be deemed the holder.

~~(4)(3)~~ Any dividend or stock split or exchange, or any distribution held and owing to a person at the time the stock or other security to which it attaches is presumed abandoned, shall also be presumed abandoned as of the same time.

Section 3. Paragraph (e) of subsection (2) of section 737.402, Florida Statutes, is amended to read:

737.402 Powers of trustees conferred by this part.--

(1) From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsection (2).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(e) To acquire an undivided interest in a trust asset in which the trustee holds an undivided interest in any trust capacity, including but not limited to money market mutual funds, mutual funds and common trust funds.

Section 4. Subsection (2) of section 744.341, Florida Statutes, is created and subsection (2) is renumbered as subsection (3) of said section, and is amended to read:

744.341 Voluntary guardianship.--

(1) Without adjudication of incompetency, the court shall appoint a guardian of the estate of a resident or

Draft #1

nonresident person who, though mentally competent, is incapable of the care, custody, and management of his estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment. The petition shall be accompanied by a certificate of a licensed physician that he has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his delegation of authority. Notice of hearing on any petition for appointment and for authority to act shall not be required, except that notice shall be given to the ward and to any person to whom the ward requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the ward.

(2) Notwithstanding the provisions of s. 744.377(3), the court may direct that the ward or a third party retain custody of specified items of property.

(3)(2) Any guardian appointed under this section shall have the same duties and responsibilities as are provided by law as to guardians of property generally, except that such duties and responsibilities shall not extend to any assets which by order of the court remain in the custody of the ward or other party..

Section 5. Subsection 10 of section 744.444, Florida Statutes, is amended to read:

744.444 Power of guardian without court approval.-- Without obtaining court approval, a guardian of the property may:

(10) Deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily

Draft #1

marketable secured loan arrangements, money market mutual funds, or other prudent investments. The guardian may redeem or sell such deposits or investments to pay the reasonable living expenses of the ward as provided herein. the ward, but the guardian is liable for any act of the nominee in connection with the security so held.

Section 6. This act shall take effect upon becoming a law.

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Proposed Committee Bill 8
(Second draft)

A bill to be entitled

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An act relating to fiduciaries; amending s.
689.071, F.S., providing for the liability of
trustees with respect to certain land trusts;
amending s. 737.402, F.S., authorizing certain
trustees to invest in money market mutual
funds, mutual funds, and common trust funds;
amending s. 744.341, F.S., authorizing the
court to direct that the guardian take
possession of less than all of the ward's
property in a guardianship case; amending s.
744.444, F.S., authorizing the guardian of a
ward to invest certain funds in money market
mutual funds; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 689.071,
Florida Statutes, are renumbered as subsections (6) and (7),
respectively, and a new subsection (5) is added to said
section to read:

689.071 Land trusts transferring interests in real
estate; ownership vests in trustee.--

(5) In addition to any other limitations on personal
liability existing pursuant to statute or otherwise, the
provisions of s. 737.306 shall apply to the trustee of a land
trust created pursuant to this section.

Section 2. Section 737.306, Florida Statutes, reads:
737.306 Personal liability of trustee to third
parties.--

1	(1) Unless otherwise provided in the contract, a	1.20
2	trustee is not personally liable on contracts, except	1.21
3	contracts for attorneys' fees, properly entered into in his	
4	fiduciary capacity in the course of administration of the	1.22
5	trust estate unless he fails to reveal his representative	
6	capacity and identify the trust estate in the contract.	1.23
7	(2) A trustee is personally liable for obligations	1.24
8	arising from ownership or control of property of the trust	1.25
9	estate or for torts committed in the course of administration	1.26
10	of the trust estate only if he is personally at fault.	
11	(3) Claims based on contracts, except contracts for	1.27
12	attorneys' fees, entered into by a trustee in his fiduciary	
13	capacity, on obligations arising from ownership or control of	1.28
14	the trust estate, or on torts committed in the course of trust	1.29
15	administration may be asserted against the trust estate by	1.30
16	proceeding against the trustee in his fiduciary capacity,	1.31
17	whether or not the trustee is personally liable.	
18	(4) Issues of liability between the trust estate and	1.32
19	the trustee individually may be determined in a proceeding for	1.33
20	accounting, surcharge, or indemnification, or in any other	1.34
21	appropriate proceeding.	
22	Section 3. Paragraph (e) of subsection (2) of section	1.35
23	737.402, Florida Statutes, is amended to read:	1.36
24	737.402 Powers of trustees conferred by this part --	1.37
25	(2) Unless otherwise provided in the trust instrument,	1.38
26	a trustee has the power	1.39
27	(e) To acquire an undivided interest in a trust asset	1.40
28	in which the trustee holds an undivided interest in any trust	1.41
29	capacity, <u>including, but not limited to, money market mutual</u>	1.42
30	<u>funds, mutual funds, and common trust funds.</u>	
31		

1	Section 4. Present subsection (2) of section 744.341,	1.43
2	Florida Statutes, is renumbered as subsection (3) and amended,	1.44
3	and a new subsection (2) is added to said section, to read:	
4	744.341 Voluntary guardianship.--	1.45
5	<u>(2) If requested in the petition for appointment of a</u>	1.46
6	<u>guardian brought under this section, the court may direct the</u>	
7	<u>guardian to take possession of less than all of the ward's</u>	1.47
8	<u>property and of the rents, income, issues, and profits from</u>	1.48
9	<u>it. In such case, the court shall specify in its order the</u>	1.49
10	<u>property to be included in the guardianship estate, and the</u>	1.50
11	<u>duties and responsibilities of the guardian appointed under</u>	
12	<u>this section shall extend only to such property.</u>	1.51
13	(3) <u>(2) Except as provided in subsection (2), any</u>	1.53
14	guardian appointed under this section shall have the same	1.55
15	duties and responsibilities as are provided by law as to	1.56
16	guardians of property generally.	
17	Section 5. Subsection (10) of section 744.444, Florida	1.57
18	Statutes, is amended to read:	
19	744.444 Power of guardian without court approval.--	1.58
20	Without obtaining court approval, a guardian of the property	1.59
21	may:	
22	(10) Deposit or invest liquid assets of the estate,	1.60
23	including moneys received from the sale of other assets, in	1.61
24	federally insured interest-bearing accounts, readily	1.62
25	marketable secured loan arrangements, <u>money market mutual</u>	
26	<u>funds</u> , or other prudent investments. <u>The guardian may redeem</u>	1.63
27	<u>or sell such deposits or investments to pay the reasonable</u>	
28	<u>living expenses of the ward as provided herein.</u>	1.65
29	Section 6. This act shall take effect upon becoming a	1.66
30	law.	
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1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Provides that the provisions of law governing the general	1.69
4	personal liability of trustees to third parties shall	1.70
5	apply with respect to the trustee of a land trust	
	conferring interest in real estate.	1.71
6	Authorizes trustees to invest in money market mutual	1.72
	funds, mutual funds, and common trust funds.	
7	Provides that the court, in a guardianship proceeding,	1.75
8	may direct that the guardian take possession of less than	1.76
	all of the ward's property.	
9	Authorizes guardians to invest in money market mutual	1.78
10	funds without court approval.	
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Proposed Committee Bill 8

Tallahassee, FL 32399-02 05

Series 19 Carton 1244

A bill to be entitled

An act relating to fiduciaries; amending s. 689.071, F.S., providing for the liability of trustees with respect to certain land trusts; amending s. 717.06, F.S., providing for the time period for the abandonment of certain interests held by a business association with respect to certain persons who participate in the business association; amending s. 717.15, F.S., correcting a cross-reference; amending s. 737.402, F.S., authorizing certain trustees to invest in money market mutual funds, mutual funds, and common trust funds; amending s. 744.341, F.S., authorizing the court to direct that the guardian take possession of less than all of the ward's property in a guardianship case; amending s. 744.444, F.S., authorizing the guardian of a ward to invest certain funds in money market mutual funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida.

Section 1. Subsections (5) and (6) of section 689.071, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to said section to read:

689.071 Land trusts transferring interests in real estate; ownership vests in trustee.--

(5) In addition to any other limitations on personal liability existing pursuant to statute or otherwise, the

1	<u>provisions of s. 737.306 shall apply to the trustee of a land</u>	
2	<u>trust created pursuant to this section.</u>	1.21
3	Section 2. Section 717.06, Florida Statutes, is	1.22
4	amended to read:	
5	717.06 Undistributed dividends, distribution of	1.24
6	business associations, stock or certificate of ownership.--	1.25
7	(1) Any dividend, profit, distribution, interest,	1.26
8	payment on principal, or other sum held or owing by a business	1.28
9	association for or to a shareholder, certificateholder,	
10	member, bondholder, or other security holder, or a	1.29
11	participating patron of a cooperative, who has not claimed it,	1.30
12	or corresponded in writing with the business association	1.31
13	concerning it, within 7 years after the date prescribed for	1.33
14	payment or delivery, is presumed abandoned if:	1.34
15	(a) The records of the business association indicate	1.35
16	that the last known address of the apparent owner is in this	1.36
17	state.	1.37
18	(b) No address of the apparent owner appears on the	1.37
19	records of the business association and:	1.38
20	1. The last known address of the apparent owner is in	1.39
21	this state; or	
22	2. The business association is domiciled in this state	1.40
23	and has not previously paid the property to the state of the	1.41
24	last known address of the apparent owner.	
25	(c) The last known address of the apparent owner, as	1.42
26	shown on the records of the holder, is in a state designated	1.43
27	by regulation adopted by the department as a state that does	1.44
28	not provide by law for the escheat or other disposition of	
29	such property to the state, and the business association is	1.45
30	domiciled in this state.	
31		

1	(d) The last known address of the apparent owner, as	1.46
2	shown on the records of the business association, is in a	1.47
3	foreign nation and the business association is domiciled in	1.48
4	this state.	
5	<u>(2) Notwithstanding the provisions of subsection (1),</u>	1.49
6	<u>in the case of an instrument issued in bearer form, any</u>	
7	<u>dividend, profit, distribution, interest, payment on</u>	1.50
8	<u>principal, or other sum held owing shall not be presumed</u>	
9	<u>abandoned until 7 years after the date the principal of the</u>	1.51
10	<u>instrument becomes fully payable, by maturity or otherwise.</u>	1.52
11	(3) ⁽²⁾ When any dividend, profit, distribution,	1.54
12	interest, payment on principal, or other sum under subsection	1.55
13	(1) is presumed abandoned, the intangible interest in the	
14	business association, as evidenced by the stock records or	1.56
15	membership records of the association, pursuant to which the	1.57
16	sum in subsection (1) became owing to the owner, shall be	1.58
17	presumed abandoned at the same time the sum is presumed	
18	abandoned. With respect to such interest, the business	1.59
19	association shall be deemed the holder.	1.60
20	(4) ⁽³⁾ Any dividend or stock split or exchange, or any	1.61
21	distribution held and owing to a person at the time the stock	
22	or other security to which it attaches is presumed abandoned,	1.61/1
23	shall also be presumed abandoned as of the same time.	1.61/2
24	Section 3. Subsection (2) of section 717.15, Florida	1.61/3
25	Statutes, is amended to read:	
26	717.15 Relief from liability by payment or delivery.--	1.65
27	(2) The holder of any interest under s. 717.06 (3) ⁽²⁾	1.66
28	or (4) ⁽³⁾ or s. 717.10 shall deliver a duplicate certificate	1.68
29	to the department within the time specified in s. 717.14.	
30	Upon delivery to the department, the holder and any transfer	1.70
31	agent, registrar, or other person acting for or on behalf of	1.71

1	the holder in executing or delivering such duplicate	1.72
2	certificate shall be relieved from all liability to any	
3	person, including, but not limited to, any person acquiring	1.73
4	the certificate presumed abandoned or the certificate issued	1.74
5	to the department, for any losses or damages resulting to such	1.75
6	person by the issuance and delivery to the department of such	
7	duplicate certificate.	1.76
8	Section 4. Section 737.306, Florida Statutes, reads:	1.78
9	737.306 Personal liability of trustee to third	1.79
10	parties.--	
11	(1) Unless otherwise provided in the contract, a	1.79
12	trustee is not personally liable on contracts, except	1.80
13	contracts for attorneys' fees, properly entered into in his	
14	fiduciary capacity in the course of administration of the	1.81
15	trust estate unless he fails to reveal his representative	
16	capacity and identify the trust estate in the contract.	1.82
17	(2) A trustee is personally liable for obligations	1.83
18	arising from ownership or control of property of the trust	1.84
19	estate or for torts committed in the course of administration	2.1
20	of the trust estate only if he is personally at fault.	
21	(3) Claims based on contracts, except contracts for	2.2
22	attorneys' fees, entered into by a trustee in his fiduciary	
23	capacity, on obligations arising from ownership or control of	2.3
24	the trust estate, or on torts committed in the course of trust	2.4
25	administration may be asserted against the trust estate by	2.5
26	proceeding against the trustee in his fiduciary capacity,	2.6
27	whether or not the trustee is personally liable.	
28	(4) Issues of liability between the trust estate and	2.7
29	the trustee individually may be determined in a proceeding for	2.8
30	accounting, surcharge, or indemnification, or in any other	2.9
31	appropriate proceeding.	

1 Section 5. Paragraph (e) of subsection (2) of section 2.10
2 737.402, Florida Statutes, is amended to read: 2.11

3 737.402 Powers of trustees conferred by this part.-- 2.12

4 (2) Unless otherwise provided in the trust instrument, 2.13
5 a trustee has the power: 2.14

6 (e) To acquire an undivided interest in a trust asset 2.15
7 in which the trustee holds an undivided interest in any trust 2.16
8 capacity, including, but not limited to, money market mutual 2.17
9 funds, mutual funds, and common trust funds.

10 Section 6. Present subsection (2) of section 744.341, 2.18
11 Florida Statutes, is renumbered as subsection (3) and amended, 2.19
12 and a new subsection (2) is added to said section, to read:

13 744.341 Voluntary guardianship.-- 2.20

14 (2) If requested in the petition for appointment of a 2.21
15 guardian brought under this section, the court may direct the
16 guardian to take possession of less than all of the ward's 2.22
17 property and of the rents, income, issues, and profits from 2.23
18 it. In such case, the court shall specify in its order the 2.24
19 property to be included in the guardianship estate, and the 2.25
20 duties and responsibilities of the guardian appointed under
21 this section shall extend only to such property. 2.26

22 ~~(3)~~ (2) Except as provided in subsection (2), any 2.26/1
23 guardian appointed under this section shall have the same 2.26/3
24 duties and responsibilities as are provided by law as to 2.26/4
25 guardians of property generally.

26 Section 7. Section 744.377, Florida Statutes, reads: 2.26/5

27 744.377 Duties of guardian of the property.-- 2.31

28 (1) It is the duty of the guardian of the property of 2.32
29 the ward:
30
31

1	(a) To protect and preserve the property and to invest	2.33
2	it prudently as defined in s. 737.302, apply it as provided in	
3	s. 744.397, and account for it faithfully.	2.34
4	(b) To perform all other duties required of him by	2.35
5	law.	
6	(c) At the termination of the guardianship, to deliver	2.36
7	the assets of the ward to the person lawfully entitled to	2.37
8	them.	
9	(2) The guardian shall observe the standards in	2.38
10	dealing with the guardianship property that would be observed	2.39
11	by a prudent man dealing with the property of another, and, if	2.40
12	the guardian has special skills or is named guardian on the	
13	basis of representations of special skills or expertise, he is	2.41
14	under a duty to use those skills.	2.42
15	(3) The guardian shall take possession of all of the	2.43
16	ward's property and of the rents, income, issues, and profits	2.44
17	from it, whether accruing before or after his appointment, and	2.45
18	of the proceeds arising from the sale, lease, or mortgage of	2.46
19	the property or of any part. All of the property and the	2.47
20	rents, income, issues, and profits from it shall be assets in	2.48
21	the hands of the guardian for the payment of debts, taxes,	
22	claims, charges, and expenses of the guardianship and for the	2.49
23	care, support, maintenance, and education of the ward or his	2.50
24	dependents, as authorized by law or approved by the court.	2.51
25	(4) Within 60 days after his appointment, the guardian	2.52
26	shall file a complete inventory of the property that has come	2.53
27	to his knowledge and of any cause of action on which his ward	2.54
28	has a right to sue.	
29	Section 8. Subsection (10) of section 744.444, Florida	2.55
30	Statutes, is amended to read:	
31		

1	744.444 Power of guardian without court approval.--	2.56
2	Without obtaining court approval, a guardian of the property	2.57
3	may:	
4	(10) Deposit or invest liquid assets of the estate,	2.58
5	including moneys received from the sale of other assets, in	2.59
6	federally insured interest-bearing accounts, readily	2.60
7	marketable secured loan arrangements, <u>money market mutual</u>	
8	<u>funds</u> , or other prudent investments. <u>The guardian may redeem</u>	1:lus
9	<u>or sell such deposits or investments to pay the reasonable</u>	
10	<u>living expenses of the ward as provided herein.</u>	2.63
11	Section 9. This act shall take effect upon becoming a	2.64
12	law.	
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1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Provides that the provisions of law governing the general	2.67
4	personal liability of trustees to third parties shall	2.68
5	apply with respect to the trustee of a land trust	
6	conferring interest in real estate.	2.69
7	Provides that in the case of an instrument issued in	2.71
8	bearer form any dividend, profit, distribution, interest,	2.72
9	payment on principal, or other sum held owing by a	
10	business association shall not be presumed abandoned	2.73
11	until 7 years after the date the principal of the	
12	instrument becomes fully payable, by maturity or	2.74
13	otherwise.	
14	Authorizes trustees to invest in money market mutual	2.76
15	funds, mutual funds, and common trust funds.	
16	Provides that the court, in a guardianship proceeding,	2.78
17	may direct that the guardian take possession of less than	2.79
18	all of the ward's property.	
19	Authorizes guardians to invest in money market mutual	2.81
20	funds without court approval.	
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COMMITTEE ON JUDICIARY
STAFF SUMMARY

HB:PCB 8 Series 19 Carton 1244

OTHER COMM. REFERENCE: _____

SPONSOR: Committee on Judiciary

PREPARED BY: Debby Kaveney *DK*

SUBJECT: Fiduciaries

STAFF DIRECTOR: Richard Hixson *RH*

DATE: January 27, 1984

I. SUMMARY

A. Present Situation

1. Section 737.306, F.S., limits the personal liability of trustees. In contract, a trustee is not personally liable if he reveals his representative capacity and identifies the trust. In tort, the trustee is not personally liable unless he is personally at fault or is acting outside the scope of his authority. These limitations of liability were enacted when the Legislature altered the common law by recognizing trust relationships and thereby allowing the trustee to be sued at law in his capacity as trustee. Florida's Second District has construed these limitations on liability to apply only to trustees of classical testamentary or inter vivos trusts and not to land trust trustees, Taylor v. Richmond's New Approach Association, Inc., 351 So.2d 1094 (Fla. 2d DCA 1977).

Handwritten note:
Rising level of
interest coverage w/ 737.306
with the bill
- beneficiaries of trust

2. Section 717.06(1), F.S., provides generally that any payments such as dividends, interest or payment on principal owed by a business to a shareholder, bondholder, etc., are presumed abandoned seven years after the date prescribed for payment if such person has not claimed the payment or corresponded with the business within that time. Subsection (3) provides that any such payments which are due to the person at the time the security to which it attaches is presumed abandoned, shall also be presumed abandoned as of the same time.

4. Section 4 recites the current provisions of s. 737.306 as referred to in the amendments in Section 1 of the bill.

5. Section 737.402(2)(e), F.S., provides that, unless otherwise provided in the trust instrument, the trustee has the power, without the necessity of court authorization, to acquire an undivided interest in a trust asset in which the trustee holds an undivided interest in any trust capacity. This means that a trustee may compile sums from several trusts for which he is trustee and, rather than make many small investments for each trust, may combine the sums and, as trustee, make one larger investment.

6. Section 744.341, F.S., relates to voluntary guardianships wherein a person who is mentally competent voluntarily petitions the court to appoint a guardian of his estate because of his physical infirmity or age. Subsection (2), by imposing the same duties and responsibilities on the guardian as where the ward is incompetent, requires that the guardian take possession of all of the ward's property and be responsible therefor. (See s.744.377(3)).

7. Section 7 recites the current provisions of s. 744.377 for further understanding of the amendments in Section 6 of the bill.

8. Section 744.444(10), F.S., provides that a guardian may, without obtaining court approval, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally-insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments. Section 744.442(12), F.S., requires court approval to, among other things, sell any personal property of the estate. Therefore, such prudent investments as are permitted to be made without court approval in s. 744.444(10) cannot be redeemed or sold without court approval.

B. Probable Effect of Proposed Changes:

1. Section 1 provides that trustees of land trusts would be protected by the limitations of liability provided in s. 737.306, F.S. That is, in a contract action, the trustee would not be personally liable if he had revealed that he was acting in the capacity of trustee and he had identified the trust. In tort, the trustee would not be personally liable unless he was personally at fault or acting outside the scope of his authority as trustee.

2. Section 2 would create s. 717.06(2), F.S., to provide that in the case of bearer instruments, the seven year time period for abandonment would not begin running until the date the principal becomes fully payable. This amendment would operate to lengthen the time before which bearer bonds would escheat to the state.

3. Section 3 constitutes a technical amendment.

5. Section 5 simply clarifies that trust assets in which a trustee may invest as a "collective" trustee include money market funds, mutual funds and common trust funds.

6. Section 6 amends s. 744.341 so that in a voluntary guardianship the court has the authority to direct that less than all of the ward's property be included in the guardianship estate upon a request in the ward's petition. The duties and responsibilities of the guardian would extend only to the property included in the guardianship estate.

8. Section 7 amends s. 744.444(10) to specifically provide that money market mutual funds are prudent investments in which assets of the guardianship estate may be invested without court approval. The amendment further provides that investments allowed by subsection (10) may be redeemed or sold, but only to pay the reasonable living expenses of the ward.

II. FISCAL IMPACT:

While no specific cost savings can be set forth, provisions in the bill should operate to reduce the cost of performing trustee or guardianship services and allow more beneficial investment of the corpus of trusts or guardianship estates.

Section 2 would operate to allow business associations to retain funds longer than would have otherwise earlier escheated to the state, thereby benefitting the business association at the expense of the state.

Akerman, Senterfitt & Edison
Attorneys and Counsellors at Law

(A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS)

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REPLY TO Tallahassee

August 22, 1983

Ms. Deborah R. Kaveney
Legislative Analyst
Judiciary Committee
House of Representatives
208 House Office Building
Tallahassee, Florida

Re: Legislation Creating a Durable Power of Attorney

Dear Debby:

I have enclosed a proposed draft of legislation creating a Durable Power of Attorney. This legislation expands the scope and usefulness of the power of attorney over the existing provisions for the Durable Family Power of Attorney found in Section 709.08, Florida Statutes (1981). As you know, the present statute limits to close family members the persons who can qualify as attorneys in fact, and further revokes said power on the incapacity of the principal.

In developing the enclosed proposed draft, the legislative trust committee for the FBA considered several versions. Of these, North Carolina's Durable Power of Attorney Act and the Uniform Durable Power of Attorney Act represent two distinct approaches. The enclosed proposed draft has attempted to incorporate the good points of both these approaches.

Generally, the trust committee is suggesting a durable power of attorney patterned more after the one created under the Uniform Act. This eliminates the court supervised recording and record keeping requirements which the North Carolina statute contains. We do think it is a good idea to have a recording requirement; however, this can be more simply achieved by requiring that the power of attorney specifically designates the county of recordation in the instrument itself. This eliminates any uncertainty on

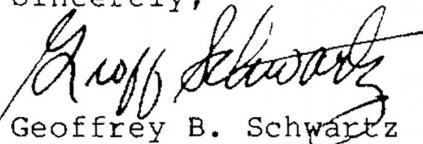
Ms. Deborah R. Kaveney
August 22, 1983
Page Two

where the instrument is to be recorded. It is felt by those in the industry that the recording requirement is better protection for persons dealing with attorneys in fact than requiring the affidavit, as provided in the Uniform Act. Further, the accounting and record keeping requirements are an important check on the potential for abuse of the durable power of attorney; however, it is felt by those in the industry that this can be done without the active supervision of the courts.

Finally, the proposed draft follows the Uniform Act's provision for the continued validity of a durable power of attorney during guardianship. It is felt that such a power can be a useful supplement to guardianships. The attorney in fact would owe the same fiduciary duties to the guardian as he would to the principal.

I have enclosed copies of both the Uniform Act and the North Carolina statute for your information. If after reviewing the enclosed materials, if you have any questions or would like to discuss this further, please advise.

Thank you for your assistance.

Sincerely,

Geoffrey B. Schwartz

GBS/rd
Enclosures
cc: K. Lewis Carr
Allen F. Decker
John Ross
Tina Kotter
Rick Hurt

courts. This section shall apply to all such instruments heretofore or hereafter executed. Registers of deeds shall be required to index all such instruments filed for registration both in the name of the principal or principals executing the powers of appointment and in the name of the attorney-in-fact executing the instrument: Provided, that instruments heretofore registered and indexed only in the name of the attorney-in-fact shall be valid and in all respects binding upon the principal or principals insofar as validity of registration is concerned. (1945, c. 204, 1959, c. 210.)

§ 47-115.1. Appointment of attorney-in-fact which may be continued in effect notwithstanding incapacity or mental incompetence of the principal therein. — (a) Any person 18 years of age or more and mentally incompetent may as principal execute a power of attorney pursuant to the provisions of this section which shall continue in effect until revoked as hereinafter provided, notwithstanding any incapacity or mental incompetence of such principal which occurs after the date of the execution and acknowledgment of the power of attorney

(b) The power of attorney shall be in writing, signed by the principal under seal, acknowledged by the principal before an officer authorized to take the acknowledgment of deeds whose authority is recognized under the law of North Carolina in effect at the time of such acknowledgment, and delivered to the attorney-in-fact.

(c) The power of attorney shall contain a statement that it is executed pursuant to the provisions of this section, or shall contain such other language as shall clearly indicate the intention that the power of attorney shall continue in effect notwithstanding the incapacity or incompetence of the principal

(d) No power of attorney executed pursuant to the provisions of this section shall be valid but from the time of registration thereof in the office of the register of deeds of that county in this State designated in the power of attorney, or if no place of registration is designated, in the office of the register of deeds of the county in which the principal has his legal residence at the time of such registration or, if the principal has no legal residence in this State at the time of registration or the attorney-in-fact is uncertain as to the principal's residence in this State, in some county in the State in which the principal owns property or the county in which one or more of the attorneys-in-fact reside. A power of attorney executed pursuant to the provisions of this section shall be valid from the time of registration thereof even though the time of such registration is subsequent to the mental incapacity or incompetence of the principal. Within 30 days after the registration of the power of attorney as above provided, the attorney-in-fact shall file with the clerk of the superior court in the county of such registration a copy of the power of attorney, but failure to file with the clerk shall not affect validity of the instrument.

(e) Every power of attorney executed pursuant to the provisions of this section shall be revoked by:

- (1) The death of the principal; or
- (2) The appointment of a guardian or trustee of the property in this State of the principal, and the registration of a certified copy of such appointment in the office of the register of deeds where the power of attorney has been registered; or
- (3) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given such power of revocation in the power of attorney, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

(f) Any person dealing in good faith with an attorney-in-fact acting under a power of attorney executed and then in effect under this section shall be protected to the full extent of the powers conferred upon such attorney-in-fact, and no person so dealing with such attorney-in-fact shall be responsible for the misapplication of any money or other property paid or transferred to such attorney-in-fact.

(g) Every attorney-in-fact acting under a power of attorney in effect under this section shall keep full and accurate records of all transactions in which he acts as agent of the principal and of all property of the principal in his hands and the disposition thereof.

(h) If the power of attorney provides for rendering inventories and accounts, such provisions shall govern. Otherwise, the attorney-in-fact shall file in the office of the clerk of the superior court of the county in which the power of attorney is registered, inventories of the property of the principal in his hands and annual and final accounts of the receipt and disposition of property of the principal and of other transactions in behalf of the principal. The power of the clerk to enforce the filing and his duties in respect to audit and recording of such accounts shall be the same as those in respect to the accounts of administrators, but the fees and charges of the clerk shall be computed or fixed only with relation to property of the principal required to be shown in the accounts and inventories. The fees and charges of the clerk shall be paid by the attorney-in-fact out of the principal's money or other property and allowed in his accounts. If the powers of an attorney-in-fact shall terminate for any reason whatever, he, or his executors or administrators, shall have the right to have a judicial settlement of a final account by any procedure available to executors, administrators or guardians.

(i) A power of attorney executed under this section may contain any provisions, not unlawful, relating to the appointment, resignation, removal and substitution of an attorney-in-fact, and to the rights, powers, duties and responsibilities of the attorney-in-fact.

(j) If all attorneys-in-fact named in the instrument or substituted shall die, or cease to exist, or shall become incapable of acting, and all methods for substitution provided in the instrument have been exhausted, such power of attorney shall cease to be effective. Any substitution by a person authorized to make it shall be in writing signed and acknowledged by such person. Notice of every other substitution shall be in writing signed and acknowledged by the person substituted. No substitution or notice shall be effective until it has been recorded in the office of the register of deeds of the county in which the power of attorney has been recorded.

(k) In the event that any power of attorney executed pursuant to the provisions of this section does not contain the amount of commissions that the attorney-in-fact is entitled to receive or the way such commissions are to be determined, and the principal should thereafter become incompetent, the commissions such attorney-in-fact shall receive shall be fixed in the discretion of the clerk of superior court pursuant to the provisions of G.S. 28-170. (1961, c. 341, s. 1, 1967, c. 1087; 1971, c. 197; c. 1231, s. 1.)

Editor's Note. — Section 28-170, referred to in subsection (k) of this section, was repealed by Session Laws 1973, c. 1329. See now § 28A-23-3.

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Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Judiciary

Series 19 Carton 1244

Hamilton D. Upchurch
Chairman

John Thomas
Vice Chairman

Richard Hixson
Staff Director

M E M O R A N D U M

TO: Hamilton D. Upchurch
FROM: Debby Kaveney
RE: FLORIDA BANKERS ASSOCIATION PROPOSALS/PROBATE PROPOSALS
DATE: September 22, 1983

I am enclosing the Florida Bankers Association proposals with my comments following each section. I have eliminated those portions that you did not want to include. You indicated that there may be other sections you would prefer to drop from the proposed committee bill. Please let me know your thoughts on this at your earliest convenience as we are intending to take this up at our October meeting.

I have also enclosed a letter from Bill Belcher regarding a change in the Probate Code which he sees as necessary. You previously indicated that you would consider this as a committee bill upon receiving a brief explanation from Mr. Belcher. I have also sent a copy of the letter to Representative Dudley who sits on the Consumer, Probate & Family Law Subcommittee and practices extensively in the probate area. Representative Dudley did not seem particularly enthused with the idea when I mentioned it to him prior to receiving the letter.

/dk

*Debby, these are OK with me with minor exceptions as noted
Hamilton*

1
2
3 689.071 Land trusts transferring interests in real
4 estate; ownership vests in trustee.--

5 (5) In addition to any other limitations on personal
6 liability existing [under ¹under] statute or otherwise, the
7 provisions of s. 737.306 [regarding ²regarding] the limitation of personal
8 liability for trustees, shall apply to the trustee of a land
9 trust created pursuant to this section.

10 (6) (5) This act is remedial in nature and shall be
11 given a liberal interpretation to effectuate the intent and
12 purposes hereinabove expressed.

13 (7) (6) This act shall not apply to any deed, mortgage,
14 or other instrument to which s. 689.07 applies.

15
16 The proposed amendment would grant to trustees
17 of land trusts the same limitations of liability
18 granted to trustees of "classical" testa-
mentary or inter vivos trusts.

19 At common law and prior to 19⁷, trustees in
20 Florida were personally liable on contracts
21 entered into on behalf of the trust and for
22 torts committed in the administration of the
23 trust. As to personal liability of the trustee
24 as mere titleholder, it appears that in Florida
25 the trustee was personally liable only to the
26 extent that the trust was able to indemnify him.
27 The rationale for personal rather than repre-
28 sentative liability stems from the fact that
29 the law courts did not recognize the trust
30 relationship and the trustee could not be sued
31 at law in his representative capacity.

Upon the passage of §737.306, the Legislature
provided for suits against the trustee in his
representative capacity and at the same time
limited the trustee's liability so that:

(1) the trustee is not personally liable on contracts
(except contracts for attorney's fees) properly
entered into unless he fails to reveal his
representative capacity and identify the trust
estate in the contract; and

(2) the trustee is personally liable for
obligations arising from ownership of or control

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of property or for torts committed in the administration of the trust only if he is personally at fault.

A land trust is essentially a dry or passive trust which is excepted from the State of Uses. The trust res consists of the title to real property. Generally, the beneficiaries hold a personal property interest which consists of: exclusive control and management of the property, exclusive right to use, possession and enjoyment of the property, earnings from the property, and the exclusive right to direct the trustee regarding title to the property.

There seems to be little reason to justify excluding trustees of land trusts from the limitations on liability provided to other trustees, keeping in mind that with regard to contract, the trustee must disclose his representative capacity and identify the trust estate in order to avoid personal liability, and with respect to tort, the trustee is liable if personally at fault.

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717.06 Undistributed dividends, distribution of business associations, stock or certificate of ownership.--

(1) Any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) The records of the business association indicate that the last known address of the apparent owner is in this state.

(b) No address of the apparent owner appears on the records of the business association and:

1. The last known address of the apparent owner is in this state; or

2. The business association is domiciled in this state and has not previously paid the property to the state of the last known address of the apparent owner.

(c) The last known address of the apparent owner, as shown on the records of the holder, is in a state designated by regulation adopted by the department as a state that does not provide by law for the escheat or other disposition of such property to the state, and the business association is domiciled in this state.

(d) The last known address of the apparent owner, as shown on the records of the business association, is in a foreign nation and the business association is domiciled in

1 this state.

2 (2) Notwithstanding the provisions of subsection (1)
3 hereof, in the case of an instrument issued in bearer form,
4 any dividend, profit, distribution, interest, payment on
5 principal, or other sum held owing shall not be presumed
6 abandoned until 7 years³ from the date the principal of the
7 instrument becomes fully payable, by maturity or otherwise.

3
After

8 (3)~~(2)~~ When any dividend, profit, distribution,
9 interest, payment on principal, or other sum under subsection
10 (1) is presumed abandoned, the intangible interest in the
11 business association, as evidenced by the stock records or
12 membership records of the association, pursuant to which the
13 sum in subsection (1) became owing to the owner, shall be
14 presumed abandoned at the same time the sum is presumed
15 abandoned. With respect to such interest, the business
16 association shall be deemed the holder.

17 (4)~~(3)~~ Any dividend or stock split or exchange, or
18 any distribution held and owing to a person at the time the
19 stock or other security to which it attaches is presumed
20 abandoned, shall also be presumed abandoned, shall also be
21 presumed abandoned as of the same time.

22
23 The proposed amendment would extend the time
24 before which dividends on bearer bonds (and
25 like instruments) would escheat to the state
26 from 7 years after the date prescribed for
27 payment to 7 years after the principal becomes
28 fully payable. It is apparently not uncommon
29 to fail to clip the coupons on bearer bonds
30 to present for payment when due.
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3 744.341 Voluntary guardianship.--

4 (2) Notwithstanding the provisions of s. 744.377(3),
5 the court may direct that the ward or a third party
6 retain custody of specified items of property.

7 (3) (2) Any guardian appointed under this section shall
8 have the same duties and responsibilities as are provided by
9 law as to guardians of property generally, except that such
10 duties and responsibilities shall not extend to any assets
11 which by order of the court remain in the custody of the ward
12 or other party.

13
14 This section was proposed to relieve a guardian
15 from his duties and responsibilities as to assets
16 which remain in the custody of the ward pursuant
17 to court order.

18 It is my understanding that the subject of guar-
19 dianship is one which is solely a creature of
20 statute. Section 744.377(3) provides that: "the
21 guardian shall take possession of all the ward's
22 property..." Before we consider relieving
23 guardians from liability for such assets, it
24 would be wise to ensure that the court does have
25 the authority to make such an order. I have
26 therefore suggested such language in new sub-
27 section (2).

28 If the court has indeed granted custody of some
29 assets to the ward or a third party, it would seem
30 that such assets would never become a part of the
31 guardianship property and therefore the guardian
would have no duties or responsibilities therefor.
The suggested change should be doing no more than
clarifying the law.

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737.402 Powers of trustees conferred by this part.--

(1) From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsection (2).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(e) To acquire an undivided interest in a trust asset in which the trustee holds an undivided interest in any trust capacity, including but not limited to money market mutual funds, mutual funds and common trust funds.

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744.444 Power of guardian without court approval.--

Without obtaining court approval, a guardian of the property may:

(10) Deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, money market mutual funds, or other prudent investments. The guardian may redeem or sell such deposits or investments to pay the reasonable living expenses of the ward as provided herein.

This proposed change merely clarifies that money market mutual funds are prudent investments which a guardian may make without prior court approval, and clarifies that investments of the liquid assets of the estate may be redeemed or sold to pay the reasonable living expenses of the ward as is implied in subsection (8) of this section.

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351 SOUTHERN REPORTER, 2d SERIES

Louise TAYLOR, Jack C. Betz and
Roger Richmond, as Trustees and
as Individuals, Appellants,

v.

RICHMOND'S NEW APPROACH
ASSOCIATION, INC., a Florida
Corporation, Appellee.

No. 77-76.

District Court of Appeal of Florida,
Second District

Nov. 4, 1977

Rehearing Denied Dec 8, 1977

Condominium association sued trustees under Illinois land trust. The Circuit Court, Lee County, John H. Shearer, Jr, J, rendered judgment against the trustees in their individual capacity, and the trustees appealed. The District Court of Appeal, Grimes, Acting C J, held that (1) statute governing personal liability of a trustee to a third party was intended to protect those acting as trustees under the classical testamentary or inter vivos test and is not applicable to trustees holding property under an Illinois land trust and (2) absent any indication that the trustees contractually sought to limit their liability in their dealings the trustees were personally liable when trust assets were lost through mortgage foreclosure

Affirmed

1. Trusts ⇌ 236, 250

Traditionally, trustees of all kinds have been held to be personally liable to third persons on obligation incurred on behalf of their trust unless there is a specific agreement against personal liability, however, trustees were entitled to reimbursement from the trust if the obligation was properly incurred in administration of the trust, such common-law rule with respect to personal liability has been altered by statute West's FSA § 737 306

2 Trusts ⇌ 250

Statute governing personal liability of a trustee to third parties was intended to protect those acting as trustees under the classical testamentary or inter vivos trust in which the extent of the trust property, authority of the trustee and identity of the beneficiaries are more likely to be known, statute is not applicable to trustees holding property under an Illinois land trust. West's F.S.A §§ 689 071, 737 306

3. Trusts ⇌ 250

Absent an indication that trustees under Illinois land trust contractually sought to limit their liability in any of their dealings, the trustees, who caused a second condominium to be built on the property, were personally liable to the association for obligations arising out of contract or by virtue of assessments against unsold condominium units, trustees were not entitled to protection of statute governing personal liability of a trustee when the trust assets were finally lost through mortgage foreclosure West's FSA § 737 306

Wayne C Hall, of Strode, Herford & Taylor, Sarasota, for appellants

J. Wayne Falbey, of Grace, Falbey & Couse, P A, Fort Myers, for appellee

GRIMES, Acting Chief Judge

The question involved in this appeal is whether the provisions of Section 737 306, Florida Statutes (1975), are applicable to trustees holding property under an Illinois land trust

Builders of the South, Inc owned certain real property upon which it built a condominium. The property was then conveyed to Louise Taylor, Jack C. Betz, and Roger Richmond, as trustees. The deed recited that the conveyance was made in conformance with the provisions of Section 689 071, Florida Statutes (1971), and that the interests of the beneficiaries shall be deemed personal property. The deed said nothing about limitations on the liability of the trustees. Betz and Richmond were respectively president and secretary of Builders of the South, Inc

The trustees caused a second condominium to be built on the property. Ultimately, control of the condominium association passed from the developers into the hands of the unit owners, and the trust became liable to the association for certain obligations, some of which arose out of contract and some of which occurred by virtue of assessments against unsold condominium units. The assets of the trust were finally lost through a mortgage foreclosure. The association later obtained a judgment against the trustees in their individual capacity. The trustees have appealed this judgment.

The so-called Illinois land trust contemplates that title to real property be taken in the name of a trustee under a recorded deed of trust while a second unrecorded agreement between the trustee and the beneficiaries declares the trustee to be vested with full legal and equitable title subject to certain specified rights of the beneficiaries which are declared to be personal property of the beneficiaries. See Florida Real Property Practice II, § 11.32 (Fla Bar Continuing Legal Educ Practice Manual, 1975). Prior to 1963 it was believed that an Illinois land trust might fail in Florida because of the statute of uses. See *McGriff v. McGill*, 62 So.2d 28 (Fla.1952), *Elvins v. Seestedt*, 141 Fla. 266, 193 So. 54 (1940).

In 1963 our legislature insured the validity of the Illinois land trust by the enactment of Chapter 63-468, Laws of Florida, which has now become Section 689.071, Florida Statutes (1975). The preamble to Chapter 63-468 recites that the Illinois land trust was a method by which developers had successfully attracted the investment of new capital and it was deemed desirable to encourage the growth of Florida land development by sanctioning the use of this method of doing business. The statute permits the trustee to convey freely without the joinder of spouses or beneficiaries and allows third persons to deal with the trustee without having to inquire into his authority. *Grammer v. Roman*, 174 So.2d 443 (Fla.2d DCA 1965).

[1-3] Traditionally, trustees of all kinds have been held to be personally liable to third persons on obligations incurred on behalf of their trust unless there is a specific agreement against personal liability. III A. Scott, *The Law of Trusts*, § 262 (3rd ed. 1967). Of course, the trustees are entitled to reimbursement from the trust if the obligation was properly incurred in the administration of the trust. *Scott, supra*. However, the common law rule with respect to personal liability of trustees was changed in Florida in 1975 by the passage of Section 737.306, Florida Statutes (1975), which reads as follows:

"737.306 *Personal liability of trustee to third parties* —

(1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts, except contracts for attorneys' fees, properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(3) Claims based on contracts, except contracts for attorneys' fees, entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not **the trustee is personally liable.**"

The trustees in this case contend that they are protected from personal liability under this statute. We cannot agree.

Section 737.306, Florida Statutes (1975), was enacted as part of the new Probate Code. This section was taken from Section 7-306 of the Uniform Probate Code, though slightly amended in particulars which are not relevant to our discussion. The comment which accompanies Section 7-306 in the Uniform Probate Code states:

"The purpose of this section is to make the liability of the trust and trustee the same as that of the decedent's estate and personal representative." 8 U.L.A. Estate, Probate and Related Laws at 587 (1972)

Thus, in the passage of Section 737.306, we believe the legislature intended to protect those acting as trustees under the classical testamentary or inter vivos trust in which the extent of the trust property, the authority of the trustee, and the identity of the beneficiaries are more likely to be known. In the absence of a more specific pronouncement, we do not believe the legislature intended to extend this protection to Florida land developers operating under an Illinois land trust. To hold otherwise would give the developers limited liability substantially equivalent to that of a corporation without the necessity of formal incorporation.

In addition to the distinctive purpose for which an Illinois land trust is normally established, there are some conceptual differences between this kind of trust and the typical testamentary or inter vivos trust. In the case of an ordinary trust, if the trust property is real property the interest of the beneficiaries is usually considered to be real property. Restatement (Second) of Trusts § 130 (1959). Under Section 689.071, the interest of the beneficiaries in an Illinois land trust is considered personal property if so specified. Moreover, this statute prescribes that the trustee is vested with full rights of ownership over the real property. If the trustee of an Illinois land trust can deal with the trust property as if it were his own, we believe it logical that he be subject to personal liability for obligations which he has incurred to third persons in his administration of the trust.

There was no indication that the trustees contractually sought to limit their liability in any of their dealings which resulted in the obligations imposed upon them in this case. With respect to the assessments, Section 711.15(1), Florida Statutes (1975), specifies that a unit owner, regardless of how title is acquired, shall be liable for all as-

sessments coming due while he is owner of the unit. Therefore, since the trustees were not afforded protection under Section 737.306, Florida Statutes (1975), the court properly held them to be personally liable.

AFFIRMED

OTT and RYDER, JJ., concur.



William Dwain WOODARD, Appellant,

v.

The STATE of Florida, Appellee.

Nos 76-600, 77-820.

District Court of Appeal of Florida,
Third District.

Nov 8, 1977.

Rehearing Denied Dec. 7, 1977.

In single proceeding, the Circuit Court, Dade County, Gene Williams, J., revoked defendant's probation and imposed sentence. On consolidated appeals, the District Court of Appeal, Nathan, J., held that trial court's failure to advise defendant of his right to counsel and his resulting lack of counsel at proceeding in which defendant's probation was revoked and sentence was imposed constituted violations of defendant's constitutional rights sufficient to require reversal of sentence, even though probation revocation under circumstances need not be set aside in that discussion at hearing showed that this was not situation in which presence of counsel could have alleviated consequences of defendant's own acts.

Affirmed in part, reversed in part, and remanded.

By Committee on Judiciary

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A bill to be entitled
An act relating to fiduciaries; amending s.
689.071, F.S., providing for the liability of
trustees with respect to certain land trusts;
amending s. 737.402, F.S., authorizing certain
trustees to invest in money market mutual
funds, mutual funds, and common trust funds;
amending s. 744.341, F.S., authorizing the
court to direct that the guardian take
possession of less than all of the ward's
property in a guardianship case; amending s.
744.444, F.S., authorizing the guardian of a
ward to invest certain funds in money market
mutual funds; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 689.071,
Florida Statutes, are renumbered as subsections (6) and (7),
respectively, and a new subsection (5) is added to said
section to read:

689.071 Land trusts transferring interests in real
estate; ownership vests in trustee.--

(5) In addition to any other limitations on personal
liability existing pursuant to statute or otherwise, the
provisions of s. 737.306 shall apply to the trustee of a land
trust created pursuant to this section.

Section 2. Section 737.306, Florida Statutes, reads:
737.306 Personal liability of trustee to third
parties.--

1	(1) Unless otherwise provided in the contract, a	1.20
2	trustee is not personally liable on contracts, except	1.21
3	contracts for attorneys' fees, properly entered into in his	
4	fiduciary capacity in the course of administration of the	1.22
5	trust estate unless he fails to reveal his representative	
6	capacity and identify the trust estate in the contract.	1.23
7	(2) A trustee is personally liable for obligations	1.24
8	arising from ownership or control of property of the trust	1.25
9	estate or for torts committed in the course of administration	1.26
10	of the trust estate only if he is personally at fault.	
11	(3) Claims based on contracts, except contracts for	1.27
12	attorneys' fees, entered into by a trustee in his fiduciary	
13	capacity, on obligations arising from ownership or control of	1.28
14	the trust estate, or on torts committed in the course of trust	1.29
15	administration may be asserted against the trust estate by	1.30
16	proceeding against the trustee in his fiduciary capacity,	1.31
17	whether or not the trustee is personally liable.	
18	(4) Issues of liability between the trust estate and	1.32
19	the trustee individually may be determined in a proceeding for	1.33
20	accounting, surcharge, or indemnification, or in any other	1.34
21	appropriate proceeding.	
22	Section 3. Paragraph (e) of subsection (2) of section	1.35
23	737.402, Florida Statutes, is amended to read:	1.36
24	737.402 Powers of trustees conferred by this part.--	1.37
25	(2) Unless otherwise provided in the trust instrument,	1.38
26	a trustee has the power:	1.39
27	(e) To acquire an undivided interest in a trust asset	1.40
28	in which the trustee holds an undivided interest in any trust	1.41
29	<u>capacity, including, but not limited to, money market mutual</u>	1.42
30	<u>funds, mutual funds, and common trust funds.</u>	
31		

1 Section 4. Present subsection (2) of section 744.341, 1.4
 2 Florida Statutes, is renumbered as subsection (3) and amended, 1.4
 3 and a new subsection (2) is added to said section, to read:

4 744.341 Voluntary guardianship.-- 1.4

5 (2) If requested in the petition for appointment of a 1.4
 6 guardian brought under this section, the court may direct the
 7 guardian to take possession of less than all of the ward's 1.4
 8 property and of the rents, income, issues, and profits from 1.4
 9 it. In such case, the court shall specify in its order the 1.4
 10 property to be included in the guardianship estate, and the 1.5
 11 duties and responsibilities of the guardian appointed under
 12 this section shall extend only to such property. 1.5

13 (3) Except as provided in subsection (2), any 1.5
 14 guardian appointed under this section shall have the same 1.5
 15 duties and responsibilities as are provided by law as to 1.5
 16 guardians of property generally.

17 Section 5. Subsection (10) of section 744.444, Florida 1.5
 18 Statutes, is amended to read:

19 744.444 Power of guardian without court approval.-- 1.5

20 Without obtaining court approval, a guardian of the property 1.5
 21 may:

22 (10) Deposit or invest liquid assets of the estate, 1.6
 23 including moneys received from the sale of other assets, in 1.6
 24 federally insured interest-bearing accounts, readily 1.6
 25 marketable secured loan arrangements, money market mutual
 26 funds, or other prudent investments. The guardian may redeem 1:1
 27 or sell such deposits or investments to pay the reasonable
 28 living expenses of the ward as provided herein. 1.6'

29 Section 6. This act shall take effect upon becoming a 1.61
 30 law.

31

1:hbs

HOUSE SUMMARY

1:hbs

Provides that the provisions of law governing the general personal liability of trustees to third parties shall apply with respect to the trustee of a land trust conferring interest in real estate.

1.69

1.70

1.71

Authorizes trustees to invest in money market mutual funds, mutual funds, and common trust funds.

1.73

Provides that the court, in a guardianship proceeding, may direct that the guardian take possession of less than all of the ward's property.

1.75

1.76

Authorizes guardians to invest in money market mutual funds without court approval.

1.78