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2013 Legislature

1  
2 An act relating to land trusts; creating s. 689.073,  
3 F.S., and transferring, renumbering, and amending s.  
4 689.071(4) and (5), F.S.; providing requirements  
5 relating to vesting of ownership in a trustee;  
6 providing exclusion and applicability; amending s.  
7 689.071, F.S.; revising and providing definitions;  
8 revising provisions relating to land trust transfers  
9 of real property and vesting of ownership in a  
10 trustee; prohibiting the operation of the statute of  
11 uses to execute a land trust or to vest the trust  
12 property under certain conditions; prohibiting the  
13 operation of the doctrine of merger to execute a land  
14 trust or to vest the trust property under certain  
15 conditions; providing conditions under which a  
16 beneficial interest is deemed real property; revising  
17 and providing rights, liabilities, and duties of land  
18 trust beneficiaries; authorizing certain beneficial  
19 ownership methods; providing for the perfection of  
20 security documents; providing that a trustee's legal  
21 and equitable title to the trust property is separate  
22 and distinct from the beneficiary's beneficial  
23 interest in the land trust and the trust property;  
24 prohibiting a lien, judgment, mortgage, security  
25 interest, or other encumbrance against one interest  
26 from automatically attaching to another interest;  
27 providing that the appointment of a guardian ad litem  
28 is not necessary in certain foreclosure litigation



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29 affecting the title to trust property of a land trust;  
 30 conforming provisions to changes made by the act;  
 31 deleting provisions relating to the applicability of  
 32 certain successor trustee provisions; providing notice  
 33 requirements; providing for the determination of  
 34 applicable law for certain trusts; providing for  
 35 applicability relating to Uniform Commercial Code  
 36 financing statements; providing requirements for  
 37 recording effectiveness; amending s. 736.0102, F.S.;  
 38 revising and providing scope of the Florida Trust  
 39 Code; providing a directive to the Division of Law  
 40 Revision and Information; providing an effective date.

41

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

43

44 Section 1. Section 689.073, Florida Statutes, is created,  
 45 and present subsections (4) and (5) of section 689.071, Florida  
 46 Statutes, are transferred and renumbered as subsections (2) and  
 47 (3), respectively, of section 689.073, Florida Statutes, and  
 48 amended, to read:

49 689.073 Powers conferred on trustee in recorded

50 instrument.—

51 (1) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed,

52 mortgage, lease assignment, or other instrument heretofore or

53 hereafter made, hereinafter referred to as the "recorded

54 instrument," transferring any interest in real property,

55 including, but not limited to, a leasehold or mortgagee

56 interest, to any person or any corporation, bank, trust company,



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57 or other entity duly formed under the laws of its state of  
58 qualification, which recorded instrument designates the person,  
59 corporation, bank, trust company, or other entity "trustee" or  
60 "as trustee" and confers on the trustee the power and authority  
61 to protect, to conserve, to sell, to lease, to encumber, or  
62 otherwise to manage and dispose of the real property described  
63 in the recorded instrument, is effective to vest, and is  
64 declared to have vested, in such trustee full power and  
65 authority as granted and provided in the recorded instrument to  
66 deal in and with such property, or interest therein or any part  
67 thereof, held in trust under the recorded instrument.

68 (2)~~(4)~~ NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,  
69 transferee, assignee, or person obtaining satisfactions or  
70 releases or otherwise in any way dealing with the trustee with  
71 respect to the real property or any interest in such property  
72 held in trust under the recorded instrument, as hereinabove  
73 provided for, is not obligated to inquire into the  
74 identification or status of any named or unnamed beneficiaries,  
75 or their heirs or assigns to whom a trustee may be accountable  
76 under the terms of the recorded instrument, or under any  
77 unrecorded separate declarations or agreements collateral to the  
78 recorded instrument, whether or not such declarations or  
79 agreements are referred to therein; or to inquire into or  
80 ascertain the authority of such trustee to act within and  
81 exercise the powers granted under the recorded instrument; or to  
82 inquire into the adequacy or disposition of any consideration,  
83 if any is paid or delivered to such trustee in connection with  
84 any interest so acquired from such trustee; or to inquire into



85 | any of the provisions of any such unrecorded declarations or  
86 | agreements.

87 |       ~~(3)~~(5) BENEFICIARY CLAIMS.—All persons dealing with the  
88 | trustee under the recorded instrument as hereinabove provided  
89 | take any interest transferred by the trustee thereunder, within  
90 | the power and authority as granted and provided therein, free  
91 | and clear of the claims of all the named or unnamed  
92 | beneficiaries of such trust, and of any unrecorded declarations  
93 | or agreements collateral thereto whether referred to in the  
94 | recorded instrument or not, and of anyone claiming by, through,  
95 | or under such beneficiaries. However, this section does not  
96 | prevent a beneficiary of any such unrecorded collateral  
97 | declarations or agreements from enforcing the terms thereof  
98 | against the trustee.

99 |       (4) EXCLUSION.—This section does not apply to any deed,  
100 | mortgage, or other instrument to which s. 689.07 applies.

101 |       (5) APPLICABILITY.—The section applies without regard to  
102 | whether any reference is made in the recorded instrument to the  
103 | beneficiaries of such trust or to any separate collateral  
104 | unrecorded declarations or agreements, without regard to the  
105 | provisions of any unrecorded trust agreement or declaration of  
106 | trust, and without regard to whether the trust is governed by s.  
107 | 689.071 or chapter 736. This section applies both to recorded  
108 | instruments that are recorded after the effective date of this  
109 | act and to recorded instruments that were previously recorded  
110 | and governed by similar provisions contained in s. 689.071(3),  
111 | Florida Statutes 2012, and any such recorded instrument  
112 | purporting to confer power and authority on a trustee under such



113 provisions of s. 689.071(3), Florida Statutes 2012, is valid and  
 114 has the effect of vesting full power and authority in such  
 115 trustee as provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended  
 117 by this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the "Florida  
 120 Land Trust Act."

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) "Beneficial interest" means any interest, vested or  
 123 contingent and regardless of how small or minimal such interest  
 124 may be, in a land trust which is held by a beneficiary.

125 (b) "Beneficiary" means any person or entity having a  
 126 beneficial interest in a land trust. A trustee may be a  
 127 beneficiary of the land trust for which such trustee serves as  
 128 trustee.

129 ~~(c) "Holder of the power of direction" means any person or~~  
 130 ~~entity having the authority to direct the trustee to convey~~  
 131 ~~property or interests, execute a mortgage, distribute proceeds~~  
 132 ~~of a sale or financing, and execute documents incidental to the~~  
 133 ~~administration of a land trust.~~

134 (c)(d) "Land trust" means any express written agreement or  
 135 arrangement by which a use, confidence, or trust is declared of  
 136 any land, or of any charge upon land, under which the title to  
 137 real property, including, but not limited to, a leasehold or  
 138 mortgagee interest, ~~both legal and equitable,~~ is vested in a  
 139 trustee by a recorded instrument that confers on the trustee the  
 140 power and authority prescribed in s. 689.073(1) and under which



141 the trustee has no duties other than the following:

142 1. The duty to convey, sell, lease, mortgage, or deal with

143 the trust property, or to exercise such other powers concerning

144 the trust property as may be provided in the recorded

145 instrument, in each case as directed by the beneficiaries or by

146 the holder of the power of direction;

147 2. The duty to sell or dispose of the trust property at

148 the termination of the trust;

149 3. The duty to perform ministerial and administrative

150 functions delegated to the trustee in the trust agreement or by

151 the beneficiaries or the holder of the power of direction; or

152 4. The duties required of a trustee under chapter 721, if

153 the trust is a timeshare estate trust complying with s.

154 721.08(2)(c)4. or a vacation club trust complying with s.

155 721.53(1)(e),

156

157 However, the duties of the trustee of a land trust created

158 before the effective date of this act may exceed the limited

159 duties listed in this paragraph to the extent authorized in

160 subsection (12) subsection (3). ~~The recorded instrument does not~~

161 ~~itself create an entity, regardless of whether the relationship~~

162 ~~among the beneficiaries and the trustee is deemed to be an~~

163 ~~entity under other applicable law.~~

164 (d) "Power of direction" means the authority of a person,

165 as provided in the trust agreement, to direct the trustee of a

166 land trust to convey property or interests, execute a lease or

167 mortgage, distribute proceeds of a sale or financing, and

168 execute documents incidental to the administration of a land



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169 trust.

170 (e) "Recorded instrument" has the same meaning as provided  
171 in s. 689.073(1).

172 (f) "Trust agreement" means the written agreement  
173 governing a land trust or other trust, including any amendments.

174 (g) "Trust property" means any interest in real property,  
175 including, but not limited to, a leasehold or mortgagee  
176 interest, conveyed by a recorded instrument to a trustee of a  
177 land trust or other trust.

178 (h)-(e) "Trustee" means the person ~~or entity~~ designated in  
179 a recorded instrument or trust agreement ~~trust instrument~~ to  
180 hold ~~legal and equitable~~ title to the trust property of a land  
181 trust ~~or other trust~~.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument  
183 ~~conveyance, deed, mortgage, lease assignment, or other~~  
184 ~~instrument heretofore or hereafter made, hereinafter referred to~~  
185 ~~as the "recorded instrument,"~~ transferring any interest in real  
186 property to the trustee of a land trust and conferring upon the  
187 trustee the power and authority prescribed in s. 689.073(1), ~~in~~  
188 ~~this state, including, but not limited to, a leasehold or~~  
189 ~~mortgagee interest, to any person or any corporation, bank,~~  
190 ~~trust company, or other entity duly formed under the laws of its~~  
191 ~~state of qualification, in which recorded instrument the person,~~  
192 ~~corporation, bank, trust company, or other entity is designated~~  
193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in  
194 the recorded instrument to the beneficiaries of such land trust  
195 or to the trust agreement or any separate collateral unrecorded  
196 declarations or agreements, is effective to vest, and is hereby

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197 | declared to have vested, in such trustee both legal and  
198 | equitable title, and full rights of ownership, over the trust  
199 | ~~real~~ property or interest therein, with full power and authority  
200 | as granted and provided in the recorded instrument to deal in  
201 | and with the trust property or interest therein or any part  
202 | thereof. The recorded instrument does not itself create an  
203 | entity, regardless of whether the relationship among the  
204 | beneficiaries and the trustee is deemed to be an entity under  
205 | other applicable law; provided, the recorded instrument confers  
206 | ~~on the trustee the power and authority to protect, to conserve,~~  
207 | ~~to sell, to lease, to encumber, or otherwise to manage and~~  
208 | ~~dispose of the real property described in the recorded~~  
209 | ~~instrument.~~

210 |       (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the  
211 | statute of uses do not execute a land trust or vest the trust  
212 | property in the beneficiary or beneficiaries of the land trust,  
213 | notwithstanding any lack of duties on the part of the trustee or  
214 | the otherwise passive nature of the land trust.

215 |       (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of  
216 | merger does not extinguish a land trust or vest the trust  
217 | property in the beneficiary or beneficiaries of the land trust,  
218 | regardless of whether the trustee is the sole beneficiary of the  
219 | land trust.

220 |       (6) PERSONAL PROPERTY.—In all cases in which the recorded  
221 | instrument or the trust agreement, as hereinabove provided,  
222 | contains a provision defining and declaring the interests of  
223 | beneficiaries of a land trust ~~thereunder~~ to be personal property  
224 | only, such provision is ~~shall be~~ controlling for all purposes





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225 | when such determination becomes an issue under the laws or in  
226 | the courts of this state. If no such personal property  
227 | designation appears in the recorded instrument or in the trust  
228 | agreement, the interests of the land trust beneficiaries are  
229 | real property.

230 |       (7) TRUSTEE LIABILITY.—In addition to any other limitation  
231 | on personal liability existing pursuant to statute or otherwise,  
232 | the provisions of ss. 736.08125 and 736.1013 apply to the  
233 | trustee of a land trust created pursuant to this section.

234 |       (8) LAND TRUST BENEFICIARIES.—

235 |       (a) Except as provided in this section, the beneficiaries  
236 | of a land trust are not liable, solely by being beneficiaries,  
237 | under a judgment, decree, or order of court or in any other  
238 | manner for a debt, obligation, or liability of the land trust.

239 |       ~~(b)~~ Any beneficiary acting under the trust agreement of a  
240 | land trust is not liable to the land trust's trustee or to any  
241 | other beneficiary for the beneficiary's good faith reliance on  
242 | the provisions of the trust agreement. A beneficiary's duties  
243 | and liabilities under a land trust may be expanded or restricted  
244 | in a trust agreement or beneficiary agreement.

245 |       (b)1. If provided in the recorded instrument, in the trust  
246 | agreement, or in a beneficiary agreement:

247 |       a. A particular beneficiary may own the beneficial  
248 | interest in a particular portion or parcel of the trust property  
249 | of a land trust;

250 |       b. A particular person may be the holder of the power of  
251 | direction with respect to the trustee's actions concerning a  
252 | particular portion or parcel of the trust property of a land



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253 | trust; and

254 |       c. The beneficiaries may own specified proportions or  
255 | percentages of the beneficial interest in the trust property or  
256 | in particular portions or parcels of the trust property of a  
257 | land trust.

258 |       2. Multiple beneficiaries may own a beneficial interest in  
259 | a land trust as tenants in common, joint tenants with right of  
260 | survivorship, or tenants by the entireties.

261 |       (c) If a beneficial interest in a land trust is determined  
262 | to be personal property as provided in subsection (6), chapter  
263 | 679 applies to the perfection of any security interest in that a  
264 | beneficial interest in a land trust. If a beneficial interest in  
265 | a land trust is determined to be real property as provided in  
266 | subsection (6), then to perfect a lien or security interest  
267 | against that beneficial interest, the mortgage, deed of trust,  
268 | security agreement, or other similar security document must be  
269 | recorded in the public records of the county that is specified  
270 | for such security documents in the recorded instrument or in a  
271 | declaration of trust or memorandum of such declaration of trust  
272 | recorded in the public records of the same county as the  
273 | recorded instrument. If no county is so specified for recording  
274 | such security documents, the proper county for recording such a  
275 | security document against a beneficiary's interest in any trust  
276 | property is the county where the trust property is located. The  
277 | perfection of a lien or security interest in a beneficial  
278 | interest in a land trust does not affect, attach to, or encumber  
279 | the legal or equitable title of the trustee in the trust  
280 | property and does not impair or diminish the authority of the



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281 trustee under the recorded instrument, and parties dealing with  
282 the trustee are not required to inquire into the terms of the  
283 unrecorded trust agreement or any lien or security interest  
284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust  
286 property of a land trust is separate and distinct from the  
287 beneficial interest of a beneficiary in the land trust and in  
288 the trust property. A lien, judgment, mortgage, security  
289 interest, or other encumbrance attaching to the trustee's legal  
290 and equitable title to the trust property of a land trust does  
291 not attach to the beneficial interest of any beneficiary; and  
292 any lien, judgment, mortgage, security interest, or other  
293 encumbrance against a beneficiary or beneficial interest does  
294 not attach to the legal or equitable title of the trustee to the  
295 trust property held under a land trust, unless the lien,  
296 judgment, mortgage, security interest, or other encumbrance by  
297 its terms or by operation of other law attaches to both the  
298 interest of the trustee and the interest of such beneficiary. A  
299 ~~beneficiary's duties and liabilities may be expanded or~~  
300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a  
302 beneficiary of a land trust transfers or encumbers any the  
303 beneficial interest in the land trust does not transfer or  
304 encumber the legal or equitable title of the trustee to the  
305 trust property and does not diminish or impair the authority of  
306 the trustee under the terms of the recorded instrument. Parties  
307 dealing with the trustee of a land trust are not required to  
308 inquire into the terms of the unrecorded trust agreement.



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309           (f) The ~~An unrecorded~~ trust agreement ~~giving rise to a~~  
310 ~~recorded instrument~~ for a land trust may provide that one or  
311 more persons ~~or entities~~ have the power to direct the trustee to  
312 convey property or interests, execute a mortgage, distribute  
313 proceeds of a sale or financing, and execute documents  
314 incidental to administration of the land trust. The power of  
315 direction, unless provided otherwise in the ~~land~~ trust agreement  
316 of the land trust, is conferred upon the holders of the power  
317 for the use and benefit of all holders of any beneficial  
318 interest in the land trust. In the absence of a provision in the  
319 ~~land~~ trust agreement of a land trust to the contrary, the power  
320 of direction shall be in accordance with the percentage of  
321 individual ownership. In exercising the power of direction, the  
322 holders of the power of direction are presumed to act in a  
323 fiduciary capacity for the benefit of all holders of any  
324 beneficial interest in the land trust, unless otherwise provided  
325 in the ~~land~~ trust agreement. A beneficial interest in a land  
326 trust is indefeasible, and the power of direction may not be  
327 exercised so as to alter, amend, revoke, terminate, defeat, or  
328 otherwise affect or change the enjoyment of any beneficial  
329 interest in a land trust.

330           (g) A land trust ~~relating to real estate~~ does not fail,  
331 and any use relating to the trust property ~~real estate~~ may not  
332 be defeated, because beneficiaries are not specified by name in  
333 the recorded instrument ~~deed of conveyance~~ to the trustee or  
334 because duties are not imposed upon the trustee. The power  
335 conferred by any recorded instrument ~~deed of conveyance~~ on a  
336 trustee of a land trust to sell, lease, encumber, or otherwise



337 dispose of property described in the recorded instrument ~~deed~~ is  
338 effective, and a person dealing with the trustee of a land trust  
339 is not required to inquire any further into the right of the  
340 trustee to act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be  
342 entitled to the homestead tax exemption even if the homestead is  
343 held by a trustee in a land trust, provided the beneficiary  
344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other  
346 litigation affecting the title to trust property of a land  
347 trust, the appointment of a guardian ad litem is not necessary  
348 to represent the interest of any beneficiary.

349 (9) SUCCESSOR TRUSTEE.—

350 ~~(a) The provisions of s. 736.0705 relating to the~~  
351 ~~resignation of a trustee do not apply to the appointment of a~~  
352 ~~successor trustee under this section.~~

353 (a) ~~(b)~~ If the recorded instrument and the unrecorded ~~land~~  
354 trust agreement are silent as to the appointment of a successor  
355 trustee of a land trust in the event of the death, incapacity,  
356 resignation, or termination due to dissolution of a ~~land~~ trustee  
357 or if a ~~land~~ trustee is unable to serve as trustee of a land  
358 trust, one or more persons ~~or entities~~ having the power of  
359 direction ~~of the land trust agreement~~ may appoint a successor  
360 trustee or trustees of the land trust by filing a declaration of  
361 appointment of a successor trustee or trustees in the public  
362 records of ~~office of the recorder of deeds in the~~ county in  
363 which the trust property is located. The declaration must be  
364 signed by a beneficiary or beneficiaries of the land trust and



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365 by the ~~each~~ successor trustee or trustees, must be acknowledged  
 366 in the manner provided for acknowledgment of deeds, and must  
 367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the ~~each~~ successor trustee or  
 371 trustees.
- 372 4. A statement that ~~each successor trustee has been~~  
 373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of  
 374 direction of the land trust appointed the successor trustee or  
 375 trustees, together with an acceptance of appointment by the ~~each~~  
 376 successor trustee or trustees.

377 (b)-(e) If the recorded instrument is silent as to the  
 378 appointment of a successor trustee or trustees of a land trust  
 379 but an unrecorded ~~land~~ trust agreement provides for the  
 380 appointment of a successor trustee or trustees in the event of  
 381 the death, incapacity, resignation, or termination due to  
 382 dissolution of the ~~land~~ trustee, of a land trust, then upon the  
 383 appointment of any successor trustee pursuant to the terms of  
 384 the unrecorded ~~land~~ trust agreement, the ~~each~~ successor trustee  
 385 or trustees shall file a declaration of appointment of a  
 386 successor trustee in the public records of ~~office of the~~  
 387 ~~recorder of deeds in~~ the county in which the trust property is  
 388 located. The declaration must be signed by both the former  
 389 trustee and the ~~each~~ successor trustee or trustees, must be  
 390 acknowledged in the manner provided for acknowledgment of deeds,  
 391 and must contain:

- 392 1. The legal description of the trust property.



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- 393           2. The name and address of the former trustee.  
 394           3. The name and address of the successor trustee or  
 395 trustees.  
 396           4. A statement of resignation by the former trustee and a  
 397 statement of acceptance of appointment by the ~~each~~ successor  
 398 trustee or trustees.  
 399           5. A statement that the ~~each~~ successor trustee or trustees  
 400 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~  
 401 trust agreement.

402  
 403 If the appointment of any successor trustee of a land trust is  
 404 due to the death or incapacity of the former trustee, the  
 405 declaration need not be signed by the former trustee and a copy  
 406 of the death certificate or a statement that the former trustee  
 407 is incapacitated or unable to serve must be attached to or  
 408 included in the declaration, as applicable.

409           ~~(c)-(d)~~ If the recorded instrument provides for the  
 410 appointment of any successor trustee of a land trust and any  
 411 successor trustee is appointed in accordance with the recorded  
 412 instrument, no additional declarations of appointment of any  
 413 successor trustee are required under this section.

414           ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect  
 415 to a land trust is fully vested with all the estate, properties,  
 416 rights, powers, trusts, duties, and obligations of the  
 417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee  
 418 of a land trust is not under any duty to inquire into the acts  
 419 or omissions of a predecessor trustee and is not liable for any  
 420 act or failure to act of a predecessor trustee. A person dealing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



421 with any successor trustee of a land trust pursuant to a  
 422 declaration filed under this section is not obligated to inquire  
 423 into or ascertain the authority of the successor trustee to act  
 424 within or exercise the powers granted under the recorded  
 425 instruments or any unrecorded trust agreement ~~declarations or~~  
 426 ~~agreements~~.

427 (e) ~~(f)~~ A ~~land~~ trust agreement may provide that the trustee  
 428 of a land trust, when directed to do so by the holder of the  
 429 power of direction or by the beneficiaries of the land trust or  
 430 legal representatives of the beneficiaries, may convey the trust  
 431 property directly to another trustee on behalf of the  
 432 beneficiaries or to another representative named in such  
 433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or  
 436 mortgage against ~~in~~ a beneficial interest in a land trust or by  
 437 a mortgage on ~~land~~ trust property of a land trust, the validity  
 438 or enforceability of the debt, security interest, or mortgage  
 439 and the rights, remedies, powers, and duties of the creditor  
 440 with respect to the debt or the security are not affected by the  
 441 fact that the creditor and the trustee are the same person ~~or~~  
 442 ~~entity~~, and the creditor may extend credit, obtain any necessary  
 443 security interest or mortgage, and acquire and deal with the  
 444 property comprising the security as though the creditor were not  
 445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary  
 447 duty to the beneficiaries, and it is not evidence of a breach of  
 448 any fiduciary duty owed by the trustee to the beneficiaries for





449 a trustee to be or become a secured or unsecured creditor of the  
450 land trust, the beneficiary of the land trust, or a third party  
451 whose debt to such creditor is guaranteed by a beneficiary of  
452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given  
454 to a trustee of a land trust regarding trust property by a  
455 person who is not a party to the trust agreement must identify  
456 the trust property to which the notice pertains or include the  
457 name and date of the land trust to which the notice pertains, if  
458 such information is shown on the recorded instrument for such  
459 trust property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise  
461 provided in this section, chapter 736 does not apply to a land  
462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section  
464 if there is no recorded instrument that confers on the trustee  
465 the power and authority prescribed in s. 689.073(1).

466 (b) For a trust created before the effective date of this  
467 act:

468 1. The trust is a land trust governed by this section if a  
469 recorded instrument confers on the trustee the power and  
470 authority described in s. 689.073(1) and if:

471 a. The recorded instrument or the trust agreement  
472 expressly provides that the trust is a land trust; or

473 b. The intent of the parties that the trust be a land  
474 trust is discerned from the trust agreement or the recorded  
475 instrument;

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477 without regard to whether the trustee's duties under the trust  
478 agreement are greater than those limited duties described in s.  
479 689.071(2)(c).

480 2. The trust is not a land trust governed by this section  
481 if:

482 a. The recorded instrument or the trust agreement  
483 expressly provides that the trust is to be governed by chapter  
484 736, or by any predecessor trust code or other trust law other  
485 than this section; or

486 b. The intent of the parties that the trust be governed by  
487 chapter 736, or by any predecessor trust code or other trust law  
488 other than this section, is discerned from the trust agreement  
489 or the recorded instrument,

490  
491 without regard to whether the trustee's duties under the trust  
492 agreement are greater than those limited duties listed in s.  
493 689.071(2)(c), and without consideration of any references in  
494 the trust agreement to provisions of chapter 736 made applicable  
495 to the trust by chapter 721, if the trust is a timeshare estate  
496 trust complying with s. 721.08(2)(c)4. or a vacation club trust  
497 complying with s. 721.53(1)(e).

498 3. Solely for the purpose of determining the law governing  
499 a trust under subparagraph 1. or subparagraph 2., the  
500 determination shall be made without consideration of any  
501 amendment to the trust agreement made on or after the effective  
502 date of this act, except as provided in paragraph (d).

503 4. If the determination of whether a trust is a land trust  
504 governed by this section cannot be made under either



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505 subparagraph 1. or subparagraph 2., the determination shall be  
506 made under paragraph (c) as if the trust was created on or after  
507 the effective date of this act.

508 (c) If a recorded instrument confers on the trustee the  
509 power and authority described in s. 689.073(1) and the trust was  
510 created on or after the effective date of this act, the trust  
511 shall be determined to be a land trust governed by this section  
512 only if the trustee's duties under the trust agreement,  
513 including any amendment made on or after such date, are no  
514 greater than those limited duties described in s. 689.071(2)(c).

515 (d) If the trust agreement for a land trust created before  
516 the effective date of this act is amended on or after such date  
517 to add to or increase the duties of the trustee beyond the  
518 duties provided in the trust agreement as of the effective date  
519 of this act, the trust shall remain a land trust governed by  
520 this section only if the additional or increased duties of the  
521 trustee implemented by the amendment are no greater than those  
522 limited duties described in s. 689.071(2)(c).

523 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section  
524 does not render ineffective any effective Uniform Commercial  
525 Code financing statement filed before July 1, 2014, to perfect a  
526 security interest in a beneficial interest in a land trust that  
527 is determined to be real property as provided in subsection (6),  
528 but such a financing statement ceases to be effective at the  
529 earlier of July 1, 2019, or the time the financing statement  
530 would have ceased to be effective under the law of the  
531 jurisdiction in which it is filed, and the filing of a Uniform  
532 Commercial Code continuation statement after July 1, 2014, does



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533 | not continue the effectiveness of such a financing statement.  
534 | The recording of a mortgage, deed of trust, security agreement,  
535 | or other similar security document against such a beneficial  
536 | interest that is real property in the public records specified  
537 | in subsection (8)(c) continues the effectiveness and priority of  
538 | a financing statement filed against such a beneficial interest  
539 | before July 1, 2014, if:

540 |       (a) The recording of the security document in that county  
541 | is effective to perfect a lien on such beneficial interest under  
542 | subsection (8)(c);

543 |       (b) The recorded security document identifies a financing  
544 | statement filed before July 1, 2014, by indicating the office in  
545 | which the financing statement was filed and providing the dates  
546 | of filing and the file numbers, if any, of the financing  
547 | statement and of the most recent continuation statement filed  
548 | with respect to the financing statement; and

549 |       (c) The recorded security document indicates that such  
550 | financing statement filed before July 1, 2014, remains  
551 | effective.

552 |

553 | If no original security document bearing the debtor's signature  
554 | is readily available for recording in the public records, a  
555 | secured party may proceed under this subsection with such  
556 | financing statement filed before July 1, 2014, by recording a  
557 | copy of a security document verified by the secured party as  
558 | being a true and correct copy of an original authenticated by  
559 | the debtor. This subsection does not apply to the perfection of  
560 | a security interest in any beneficial interest in a land trust



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561 that is determined to be personal property under subsection (6).

562 (14)~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and  
563 shall be given a liberal interpretation to effectuate the intent  
564 and purposes hereinabove expressed.

565 (15)~~(12)~~ EXCLUSION.—This act does not apply to any deed,  
566 mortgage, or other instrument to which s. 689.07 applies.

567 Section 3. Section 736.0102, Florida Statutes, is amended  
568 to read:

569 736.0102 Scope.—

570 (1) Except as otherwise provided in this section, this  
571 code applies to express trusts, charitable or noncharitable, and  
572 trusts created pursuant to a law, judgment, or decree that  
573 requires the trust to be administered in the manner of an  
574 express trust.

575 (2) This code does not apply to constructive or resulting  
576 trusts; conservatorships; custodial arrangements pursuant to the  
577 Florida Uniform Transfers to Minors Act; business trusts  
578 providing for certificates to be issued to beneficiaries; common  
579 trust funds; ~~land trusts under s. 689.071, except to the extent~~  
580 ~~provided in s. 689.071(7);~~ trusts created by the form of the  
581 account or by the deposit agreement at a financial institution;  
582 voting trusts; security arrangements; liquidation trusts; trusts  
583 for the primary purpose of paying debts, dividends, interest,  
584 salaries, wages, profits, pensions, or employee benefits of any  
585 kind; and any arrangement under which a person is nominee or  
586 escrowee for another.

587 (3) This code does not apply to any land trust under s.  
588 689.071, except to the extent provided in s. 689.071(7), s.



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589 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its  
590 creation by chapter 736, former chapter 737, or any prior trust  
591 statute superseded or replaced by any provision of former  
592 chapter 737, is not a land trust regardless of any amendment or  
593 modification of the trust, any change in the assets held in the  
594 trust, or any continuing trust resulting from the distribution  
595 or retention in further trust of assets from the trust.

596 Section 4. The Division of Law Revision and Information is  
597 directed to replace the phrase "the effective date of this act"  
598 wherever it occurs in this act with such date.

599 Section 5. This act shall take effect upon becoming a law.