

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Barry F. Spivey, Chair, Trust Law Committee of the Real Property
Probate & Trust Law Section

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Position Type Trust Law Committee, RPPTL Section, The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

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(List name, address and phone number)

Appearances

Before Legislators (SAME)
(List name and phone # of those having face to face contact with Legislators)

Meetings with
Legislators/staff (SAME)
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position X Support Oppose Technical Assistance Other

Proposed Wording of Position for Official Publication:

Support amendment of F.S. §736.0306 to provide that a trustee cannot be given authority to appoint "designated representatives" for trust beneficiaries to whom the trustee can account in lieu of accounting directly to the beneficiaries.

Reasons For Proposed Advocacy:

Section 736.0306 of the Florida Trust Code allows a trust settlor to provide that a "designated representative" of a trust beneficiary can receive trust accountings and other information from the trustee in lieu of furnishing accountings and other information directly to the beneficiary. The statute is being interpreted to allow the terms of a trust to give the *trustee* the power to appoint designated representatives for beneficiaries. It is contrary to the traditional concepts of fiduciary responsibility to allow a trustee to avoid the fundamental duty to account to beneficiaries by designating his own surrogate to whom the trustee accounts instead.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position RPPTL Section supported adoption of the Florida Trust Code in 2007
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if
more than one)

NONE
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

None
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

WHITE PAPER

PROPOSED REVISIONS TO §736.0306, FLA. STAT.

I. SUMMARY

The purpose of the proposed change to this statute is to clarify that a trustee may not be empowered to select a “designated representative” for a beneficiary to whom the trustee may account and furnish other required information instead of furnishing such information directly to the beneficiary.

II. CURRENT SITUATION

The current subsection 736.0306 has been interpreted by several leading estate and trust practitioners to allow the terms of a trust to grant a trustee the power to select “designated representatives” under the statute. When there is a designated representative for a beneficiary, the trustee furnishes trust accountings and other information to the representative and not to the beneficiary. The statute was not intended to allow a trustee to designate a representative for a beneficiary to whom the trustee does not wish to account directly, but it does not currently prohibit that result.

III. EFFECT OF PROPOSED CHANGE

The proposed amendment would make it clear that a trust settlor could provide for selection of a designated representative for one or more beneficiaries by anyone *other than* a trustee of the trust.

736.0306. Designated representative

(1) If ~~authorized~~ specifically nominated in the trust instrument, one or more persons may be designated to represent and bind a beneficiary and receive any notice, information, accounting, or report. The trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report.

(2) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind a beneficiary while that person is serving as trustee.

(3) Except as otherwise provided in this code, a person designated, as provided in subsection (1) may not represent and bind another beneficiary if the person designated also is a beneficiary, unless:

(a) That person was named by the settlor; or

(b) That person is the beneficiary's spouse or a grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse.

(4) No person designated, as provided in subsection (1), is liable to the beneficiary whose interests are represented, or to anyone claiming through that beneficiary, for any actions or omissions to act made in good faith.

IV. ANALYSIS

It is not consistent with historic concepts of the fiduciary relationship between trustees and beneficiaries to allow a trustee to avoid the fundamental duty of a trustee to account to beneficiaries by handpicking an alternative representative to whom the trustee can account instead of the beneficiaries. The proposed amendment closes an unintended consequence of the existing statutory language.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

VI. DIRECT IMPACT ON PRIVATE SECTOR

The proposal will not have a direct economic impact on the private sector.

VII. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VIII. OTHER INTERESTED PARTIES

None are known at this time.