



# The Florida Bar

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## VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an official request for approval of legislative or political activity, whether new or rollover.
- Political activity is defined in SBP 9.11 as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

### General Information

**Submitted by:** *(name of VBG or individual)* Trust Law Committee of the Real Property, Probate and Trust Law Section

**Address:** *(address and phone #)* c/o Matt Triggs, 2244 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431, Ph. 561-995-4736

**Position Level:** *(name of VBG)* RPPTL Section, Trust Law Committee

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**Proposed Advocacy**

Complete #1 below if the issue is legislative, #2 if the issue is political; #3 must be completed.

**1. Proposed Wording of Legislative Position for Official Publication**

Proposed amendments to § 736.0705, Fla. Stat. to clarify that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign.

**2. Political Proposal**

NA

**3. Reasons For Proposed Advocacy**

a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? YES

b. Which goal or objective of the Bar's strategic plan is advanced by the proposal?  
Objective II -- Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System

c. The proposal: (*see SBP 9.50(a) - check all that apply*)

  X   is within the group's subject matter jurisdiction as described in the group's bylaws;

       is beyond the scope of the bar's permissible legislative or political activity, or within the bar's permissible scope of legislative or political activity and consistent with an official bar position on that issue; and

       does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

d. Additional Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Referrals to Other Voluntary Bar Groups

The VBG must provide copies of the proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. *See* SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The submission may be made before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

NA

## Contacts

### **Board & Legislation Committee Appearance** *(list name, address and phone #)*

Lawrence J. Miller, Legislative Co-Chair of the RPPTL Section, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A., Suite 107, 2101 NW. Corporate Blvd., Boca Raton, FL 33431, Ph. 561-998-7847

### **Appearances before Legislators** *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

### **Meetings with Legislators/staff** *(list name and phone # of those having direct contact with legislators)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

1 A bill to be entitled

2 An act relating to clarification that a trust  
3 instrument may, subject to minimum notice  
4 requirements, provide an additional method by which a  
5 trustee may resign and establishing an effective date.

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

8 Section 1. Section 736.0705(1), Florida Statutes, is  
9 amended to read:

10 **736.0705 Resignation of trustee.**

11 (1) A trustee may resign in any of the following ways:

12 (a) In accordance with the procedure set forth in the  
13 trust instrument and upon notice to the cotrustees or,  
14 if none, the successor trustee who has accepted the  
15 appointment, or, if none, to the person or persons who  
16 have the authority to appoint a successor trustee; or

17 (b) Upon at least 30 days' notice to the qualified  
18 beneficiaries, the settlor, if living, and all the  
19 cotrustees; or ~~(b)~~

20 (c) With the approval of the court.

21 Section 2. This act shall take effect July 1, 2022.  
22  
23

**RPPTL WHITE PAPER**  
**PROPOSE AMENDMENTS TO §736.0705(1)(a) - TRUSTEE RESIGNATION**  
(last updated 7/2/2021)

**I. SUMMARY**

This legislation clarifies that a trust instrument may, subject to minimum notice requirements, provide an additional method by which a trustee may resign. The bill does not have a fiscal impact on state funds.

**II. CURRENT SITUATION**

Florida law provides (i) that a trustee has a right to resign upon 30 days' notice and (ii) that the trustee's right to resign is a mandatory rule that can't be altered by the terms of the trust.

736.0705. Resignation of trustee. (1) a trustee may resign: (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all the cotrustees; or (b) with the approval of the court. (2) ...

736.0105. Default and mandatory rules.... (2) The terms of a trust prevail over any provision of this code except ... (o) ... the right of a trustee under s.736.0705 to resign a trusteeship.

The legislative history provides that the "trustee's right to resign is a mandatory provision and may not be denied or curtailed in the trust instrument." *See Fla. Staff Analysis, S.B. 1170, 3/21/2006.* This suggests that the trust instrument can't reduce the resignation rights set forth in the statute, but enhancing the resignation rights (by, for example, eliminating the advance notice requirement) might be permissible.

Section 736.0705 is identical to Uniform Trust Code ("UTC") §705. The comments to §705 provide that this rule "rejects the common law rule that a trustee may resign only with permission of the court, and goes further than the Restatements, which allow a trustee to resign with the consent of the beneficiaries." The comments indicate that the "default rule" should "approximate standard drafting practice" and conclude that the trustee should be able to resign by giving notice to the qualified beneficiaries, a living settlor, and any co-trustee, or by court approval. Unlike Florida, however, the resignation rule in UTC §705 is not mandatory, per UTC §105.

Whether a trustee's resignation is effective immediately or after 30 days, the sole trustee who resigns continues to have fiduciary duties until a successor trustee accepts the trusteeship.

736.0707. Delivery of property by former trustee. (1) Unless a cotrustee remains in office or the court otherwise orders and until the trust property is delivered to a successor trustee or other person entitled to the property, a trustee who has resigned or has been removed has the duties of a trustee and the powers necessary to

protect the trust property. (2) ...

As such, beneficiaries arguably don't need a 30-day notice period to be protected because fiduciary duties continue to be owed by the resigning trustee until another trustee (whether a cotrustee or a successor is in place) is in place.

### **III. EFFECT OF PROPOSED CHANGES**

The proposed changes clarify that a trust instrument can, subject to certain notice requirements, make it easier for a trustee to resign under §736.0705(1)(a). However, the 30-day notice period should continue to apply when the trust instrument is silent or if the trust instrument attempts to impose a longer notice period (or notice to a more extensive group of people). Because the (a), (b), (c) options in §736.0705(1) are alternatives, each option would operate exclusive of the other option such that a trustee could resign according to any of the three options.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

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

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

Members of the private sector – specifically trustees and trust beneficiaries – may benefit from reduced trustee fees and related transaction costs due to simplified trustee resignation procedures allowed by trust instruments. No additional costs are likely to be incurred as a result of the proposal.

### **VI. CONSTITUTIONAL ISSUES**

There are no constitutional issues.

### **VII. OTHER INTERESTED PARTIES**

Florida Bankers Association