1
2   An act relating to trusts; creating s. 736.08145,
3   F.S.; authorizing trustees of certain trusts to
4   reimburse persons being treated as the owner of the
5   trust for specified amounts and in a specified manner;
6   prohibiting certain policies, values, and proceeds
7   from being used for such reimbursement; providing
8   applicability; prohibiting certain trustees from
9   taking specified actions relating to trusts; requiring
10   that specified powers be granted to certain persons if
11   the terms of the trust require a trustee to act at the
12   direction or with the consent of such persons or that
13   specified decisions be made directly by such persons;
14   providing construction; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18   Section 1. Section 736.08145, Florida Statutes, is created
19 to read:
20   736.08145 Grantor trust reimbursement.—
21   (1)(a) Except as otherwise provided under the terms of a
22 trust, if all or any portion of the trust is treated as being
23 owned by a person under s. 671 of the Internal Revenue Code or
24 any similar federal, state, or other tax law, the trustee may,
25 in the trustee's sole discretion, reimburse the person being

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26 treated as the owner for any amount of the person's personal

27 federal, state, or other income tax liability which is

28 attributable to the inclusion of the trust's income, capital

29 gains, deductions, or credits in the calculation of the person's

30 taxable income. In the trustee's sole discretion, the trustee

31 may pay such tax reimbursement amount, determined without regard

32 to any other distribution or payment made from trust assets, to

33 the person directly or to the appropriate taxing authority.

34   (b) A life insurance policy held in the trust, the cash

35 value of any such policy, or the proceeds of any loan secured by

36 an interest in the policy may not be used for such reimbursement

37 or such payment if the person is an insured.

38   (2) This section applies to all trusts, whether created

39 on, before, or after July 1, 2020, unless:

40   (a) The trustee provides written notification that the

41 trustee intends to irrevocably elect out of the application of

42 this section, at least 60 days before the effective date of such

43 election, to the person treated as the owner of all or a portion

44 of the trust under s. 671 of the Internal Revenue Code or any

45 similar federal, state, or other tax law and to all persons who

46 have the ability to remove and replace the trustee.

47   (b) Applying this section would prevent a contribution to

48 the trust from qualifying for, or would reduce, a federal tax

49 benefit, including a federal tax exclusion or deduction, which

50 was originally claimed or could have been claimed for the

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51 contribution, including:

52   1. An exclusion under s. 2503(b) or s. 2503(c) of the

53 Internal Revenue Code;

54   2. A marital deduction under s. 2056, s. 2056A, or s. 2523

55 of the Internal Revenue Code;

56   3. A charitable deduction under s. 170(a), s. 642(c), s.

57 2055(a), or s. 2522(a) of the Internal Revenue Code; or

58   4. Direct skip treatment under s. 2642(c) of the Internal

59 Revenue Code.

60   (3) A trustee may not exercise, or participate in the

61 exercise of, the powers granted by this section with respect to

62 any trust if any of the following applies:

63   (a) The trustee is treated as the owner of all or part of

64 such trust under s. 671 of the Internal Revenue Code or any

65 similar federal, state, or other tax law.

66   (b) The trustee is a beneficiary of such trust.

67   (c) The trustee is a related or subordinate party, as

68 defined in s. 672(c) of the Internal Revenue Code, with respect

69 to a person treated as the owner of all or part of such trust

70 under s. 671 of the Internal Revenue Code or any similar

71 federal, state, or other tax law or with respect to a

72 beneficiary of such trust.

73   (4) If the terms of a trust require the trustee to act at

74 the direction or with the consent of a trust advisor, a

75 protector, or any other person, or that the decisions addressed

76   in this section be made directly by a trust advisor, a
77   protector, or any other person, the powers granted by this
78   section to the trustee must instead or also be granted, as
79   applicable under the terms of the trust, to the advisor,
80   protector, or other person subject to the limitations set forth
81   in subsection (3), which must be applied as if the advisor,
82   protector, or other person were a trustee.
83   (5) A person may not be considered a beneficiary of a
84   trust solely by reason of the application of this section,
85   including for purposes of determining the elective estate.
86   Section 2. This act shall take effect July 1, 2020.