

**JURISDICTION OVER
NONRESIDENTS IN TRUST
LITIGATION**

By

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I. Generally.

For a general discussion of the concepts of in rem and in personam jurisdiction in trust litigation, see Chapter 9 of the Florida Bar CLE manual, Administration of Trusts in Florida (7th Ed.).

II. In Rem Jurisdiction. Section 736.0202 of the Florida Trust Code was amended, effective October 1, 2013, to limit its scope to provide for in rem jurisdiction over nonresident trust beneficiaries to the extent of their interests in a trust having its principal place of administration in Florida. This is not a change in the law as currently expressed in subsection 736.0202(2) of the Trust Code.

736.0202 In Rem Jurisdiction.— Any beneficiary of a trust having its principal place of administration in this state is subject to the jurisdiction of the courts of this state to the extent of the beneficiary’s interest in the trust.

III. In Personam Jurisdiction.

A. Generally. To obtain in personam jurisdiction over a nonresident who does not appear voluntarily, there must first be a statute that identifies conduct or acts by which the nonresident is deemed to submit to the jurisdiction of Florida courts – generically known as “long-arm” statutes. Second, the nonresident must be served with process. And last, even if a nonresident does an act specified in a long-arm statute and is served, under Supreme Court decisions the nonresident must have “minimum contacts” with the State of Florida such that maintaining the suit “does not offend traditional notions of fair play and substantial justice.” Said another way, having minimum contacts depends on whether the relationship among the defendant, the forum, and the litigation is such that the defendant should reasonably expect to be sued in Florida. See *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla. 1989).

B. Current Long-arm Provisions.

1. F.S. §48.193: This is the generic long-arm statute that is not specific to trusts. It specifies acts which, if done by any resident or nonresident, result in submission to the jurisdiction of the courts of Florida. Few of the enumerated acts would be likely to confer jurisdiction over a nonresident in many court proceedings involving trustees and beneficiaries.

2. Fla. Trust Code §736.0202(1): This is a Uniform Trust Code provision that provides that a trustee submits personally to jurisdiction of the courts of Florida regarding any matter involving the trust by (i) accepting the trusteeship of a trust having its principal place of administration in Florida or (ii) by moving the principal place of administration of a trust to Florida. These provisions are retained in new subsections 736.0202(2)(a)1. and 2.

3. Fla. Trust Code §736.0807(4): This subsection is a Uniform Trust Code provision by which an agent for a trustee subjects itself to jurisdiction of Florida courts by accepting a delegation of powers or duties from the trustee of a trust that is subject to the laws of Florida. This subsection is repealed effective October 1, 2013, but appears in a slightly revised form in new s. 736.0202(2)(a)4.

4. F.S. §518.112(5): This section provides that a fiduciary (presumably a fiduciary subject to Chapter 518) may delegate investment functions to an investment agent who, by accepting the appointment as agent, submits to the jurisdiction of the courts of Florida. This statute has not been changed, but the act subjecting a nonresident agent to jurisdiction is also covered by new subsection 736.0202(2)(a)4.

C. Changes effective October 1, 2013.

1. Fla. Trust Code §736.0202(2): This entirely new subsection specifies the following eight actions that, if done by any trustee, trust beneficiary, or other person, whether or not a citizen or resident of Florida, will subject the person to personal jurisdiction in the courts of Florida:

- a. Accepting trusteeship of a trust having its principal place of administration in Florida;
- b. Moving the principal place of administration of a trust to Florida;
- c. Serving as trustee of a trust created by a settlor who was a resident of Florida at the time of creation of the trust or serving as trustee of a trust having its principal place of administration in Florida;
- d. Accepting or exercising a delegation of powers or duties from the trustee of a trust having its principal place of administration in Florida;
- e. Committing a breach of trust in Florida, or committing a breach of trust with respect to a trust having its principal place of administration in Florida at the time of the breach;
- f. Accepting compensation from a trust having its principal place of administration in Florida;
- g. Performing any act or service for a trust having its principal place of administration in Florida; and

f. Accepting a distribution from a trust having its principal place of administration in Florida with respect to any matter involving the distribution.

2. Fla. Trust Code §736.0202(2)(b): This is a new catchall provision providing for exercise of personal jurisdiction over a trustee, trust beneficiary, or other person to the maximum extent permitted by the Florida or Federal Constitutions. This type of provision is, in some states, the sole statutory long-arm provision in lieu of the enumeration of specific acts. See *Venetian Salami*, 554 So.2d 499, fn.2.

3. Addition to F.S. §48.193: Effective July 1, 2013, the generic long-arm statute is amended to add a ninth action that will subject a person to jurisdiction of the courts of Florida. That action is entering into a contract that provides for choice of Florida law to govern the contract, and which contains a provision by which a nonresident party agrees to submit to the jurisdiction of Florida courts.

4. Addition of F.S. §684.0049. Chapter 684, Florida Statutes, which applies only to international commercial arbitration, was amended to provide that the initiation of arbitration in Florida or the making of a written agreement to arbitrate which provides for arbitration in Florida, constitutes a consent to the exercise of in personam jurisdiction by the courts of Florida in any action arising out of or in connection with the arbitration and any resulting order or award.

IV. Service of Process.

Except as otherwise provided in new section 736.02025, service of process on a resident or nonresident is accomplished in accordance with Chapter 48, Florida Statutes.

When the court action is seeking only in rem or quasi in rem relief, the new section provides for service by commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt. It also provides for service by first-class mail under certain limited circumstances for actions seeking only in rem or quasi in rem relief, and those provisions are patterned after §4-303 of the Uniform Probate Code.

V. Repeal of Fla. Trust Code §726.0205.

Section 736.0205 is identical to former §737.203, which was enacted in 1974 before the Florida Supreme Court added rule 1.061 adopting the federal doctrine of forum non conveniens in 1996. Section 736.0205 on its face appears to provide a defendant in trust litigation an absolute right to object to allowing the trust litigation to proceed in Florida if the trust has its principal place of administration in another state (unless all interested parties could not be bound by litigation of the courts in the state where the trust is registered or has its principal place of administration). However, it has not been construed that way. Florida courts have held that §736.0205 is not jurisdictional but is rather a forum non conveniens statute which requires a court to determine the “most appropriate forum” in which the case should proceed. See, e.g., *Estate of McMillian*, 603 So. 2d 685 (Fla. 1st DCA 1992).

Although §736.0205 has been labeled a statute of forum non conveniens, the wording of the statute suggests that courts have limited discretion in allowing litigation to proceed over the objection of a defendant. This has led to significant confusion and litigation over the standards and burdens of proof for Florida courts to apply in addressing objections raised under the statute. It has also been suggested that the statute shifts the burden to the plaintiff to prove that their choice of venue is appropriate. *McMillian*, 603 So. 2d at 688. This conflicts with Florida Rule of Civil Procedure 1.061 which provides specifically that the defendant has the burden of pleading and proving the facts necessary to obtain a change of venue, and provides for a balancing of interests before dismissing a lawsuit. Article V §2(a) of the Florida Constitution gives the Florida Supreme Court the exclusive authority to “adopt rules for the practice and procedure in all courts including... the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked.” Since a rule now comprehensively addresses issues of forum non conveniens, §736.0205 has outlived its usefulness and is a source of confusion.

The repeal of §736.0205, effective October 1, 2013, will require courts to conduct the four-part analysis contained in Civil Rule of Procedure 1.061 in deciding a motion to dismiss a case on the basis of forum non conveniens.

736.0202 Jurisdiction over trustee and beneficiary. --

(1) IN REM JURISDICTION.— Any beneficiary of a trust having its principal place of administration in this state is subject to the jurisdiction of the courts of this state to the extent of the beneficiary’s interest in the trust.

(2) PERSONAL JURISDICTION.---

(a) Any trustee, trust beneficiary, or other person, whether or not a citizen or resident of this state, who personally or through an agent does any of the following acts submits to the jurisdiction of the courts of this state involving that trust:

1. Accepts trusteeship of a trust having its principal place of administration in this state at the time of acceptance;
2. Moves the principal place of administration of a trust to this state;
3. Serves as trustee of a trust created by a settlor who was a resident of this state at the time of creation of the trust, or serves as trustee of a trust having its principal place of administration in this state;
4. Accepts or exercises a delegation of powers or duties from the trustee of a trust having its principal place of administration in this state;
5. Commits a breach of trust in this state, or commits a breach of trust with respect to a trust having its principal place of administration in this state at the time of the breach;
6. Accepts compensation from a trust having its principal place of administration in this state;
7. Performs any act or service for a trust having its principal place of administration in this state;
8. Accepts a distribution from a trust having its principal place of administration in this state with respect to any matter involving the distribution;

(b) A court of this state may exercise personal jurisdiction over a trustee, trust beneficiary, or other person, whether found within or outside the state, to the maximum extent permitted by the State Constitution or the Federal Constitution.

736.02025 Service of Process.—

(1) Except as otherwise provided in this section, service of process upon any person may be made as provided in Chapter 48.

(2) Where only in rem or quasi in rem relief is sought against a person in a matter involving a trust, service of process on that person may be made by sending a copy of the summons and complaint by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt. Service under this subsection shall be complete upon signing of a receipt by the addressee or by any person authorized to receive service of a summons on behalf of the addressee as provided in Chapter 48. Proof of service shall be by verified statement of the person serving the summons, to which must be attached the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or other authorized person.

(3) Under any of the following circumstances, service of original process pursuant to subsection (2) may be made by first-class mail:

- (a) If registered or certified mail service to the addressee is unavailable, and if delivery by commercial delivery service is also unavailable;
- (b) If delivery is attempted and is refused by the addressee;
- (c) If delivery by mail requiring a signed receipt is unclaimed after notice to the addressee by the delivering entity.

(4) If service of process is obtained under subsection (3), proof of service shall be made by verified statement of the person serving the summons. The verified statement must state the basis for service by first-class mail, the date of mailing, and the address to which the mail was sent.