

# Jurisdictional Competition for Trust Funds

## Florida's Competitive Strengths

Presented by

Juan C. Antúnez, Esq.<sup>1</sup>

Stokes McMillan Maracini & Antúnez P.A.

for

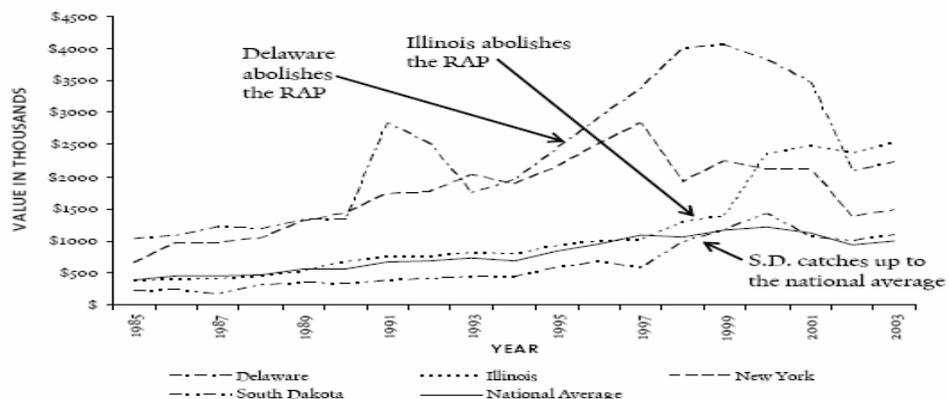
Miami Branch of Society of Trusts and Estates Practitioners (STEP)

(November 5, 2007)

### 1. Inter-jurisdictional competition for trust funds appears driven in large part by tax considerations

- a. **Domestic Tax Planning – Florida is Competitive:** Those states – like Florida – that both eliminated state-level taxation of trust funds<sup>2</sup> and provided for the creation of dynasty trusts through outright repeal of their respective “rule against perpetuities” or extension of the rule’s application until centuries in the future,<sup>3</sup> experienced significant gains in trust-fund business. Prof. Robert H. Sitkoff of Harvard Law School and Prof. Max M. Schanzenbach of the Northwestern University School of Law analyzed federal banking data and concluded that as of the end of 2003 roughly **\$100 billion** in trust funds had shifted to U.S. states that abolished the rule against perpetuities and are thus amenable to the creation of dynasty trusts. According to the authors, these new trust funds may translate into as much as **\$1 billion** in yearly trustees’ fees.<sup>4</sup>

Figure 8.  
AVERAGE ACCOUNT SIZE IN DELAWARE, ILLINOIS, NEW YORK, AND SOUTH DAKOTA



- b. **International Tax Planning – U.S. is Competitive:** A 2006 article entitled *The U.S. May Be a Good Trust Jurisdiction for Foreign Persons*<sup>5</sup> by New York attorney and current U.S. chair of the U.K.-based Society of

Trusts and Estates Practitioners (STEP), G. Warren Whitaker, provides an excellent summary of U.S. tax-law changes that have made the U.S. an attractive trust jurisdiction for many foreign clients. According to Mr. Whitaker:

*“Changes in U.S. tax law have made it possible to create a trust with a single U.S. trustee that is subject to U.S. court supervision and governed by the laws of a U.S. state, and still achieve all the tax advantages of a foreign trust.”*

**2. Florida is not tainted by blacklist or tax haven treatment.**

a. From Mr. Whitaker’s article:<sup>6</sup>

*“Certain countries, such as Venezuela, Brazil, Argentina and (until recently) Mexico, have lists of jurisdictions that are considered to be tax havens. Special reporting and tax requirements are imposed on local residents who hold assets in these jurisdictions. Other jurisdictions, such as France and Switzerland, do not have formal blacklists but may treat distributions from trusts in certain jurisdictions with particular suspicion and apply presumptions regarding tax treatment of these trusts. However, [Florida] is not on any of these blacklists or lists of suspected tax havens, and trusts created under its laws will not be subject to the negative presumptions that may apply to some other jurisdictions.”*

b. **Case study:**

In April of 2006 the heads of a Bahamian corporation operating under the name “Sterling Trust” were jailed in North Carolina after a sting operation mounted by undercover agents of the IRS in connection with an alleged tax fraud conspiracy. Caught up in this scandal was former North Carolina U.S. Attorney, state judge and state Republican chairman, Samuel T. Currin, who agreed to plead guilty to being a part of the conspiracy. If he went to trial, he was facing up to 43 years behind bars. The North Carolina tax attorney involved in this matter, Rick Graves, refused a plea bargain and was eventually cleared of all charges at trial, although he was forced to live through a personal and professional nightmare in the process.<sup>7</sup>

According to a comment posted by Mr. Graves on THE FLORIDA PROBATE LITIGATION BLOG, the lesson other attorneys should draw from his experience is to be fearful of “Assistant US Attorneys off their leashes in hopes of quick fame and political glory by nailing a tax attorney. The

things that Matt Martens did and said in the course of the year were shameful and should scare every tax professional in the nation.”<sup>8</sup>

**Query:** If this case had not involved an “offshore” trust, would it and the professionals involved have been as interesting to federal law enforcement authorities?

### 3. Florida’s competitive statutory scheme

#### a. Florida’s New Trust Code.

The Uniform Trust Code, which was approved by the Uniform Law Commissioners in 2000, is the first effort by the Uniform Law Commissioners to provide the states with a comprehensive model for codifying their law on trusts. A copy of the UTC, together with over 100 pages of official comments, can be accessed through the Commissioners’ website, [www.nccusl.org](http://www.nccusl.org).

Governor Bush signed Florida’s enactment of the UTC on 6/14/06 (SB 1170, 2006 Fla. Session Laws Ch. 217). The Florida UTC became effective on 7/1/2007. The Florida UTC is codified in Chapter 736 of the Florida statutes. Practitioners seeking to familiarize themselves with the Florida UTC can access the following resources online at THE FLORIDA PROBATE LITIGATION BLOG:<sup>9</sup>

- Final Committee Draft of the Florida UTC. This document contains a cross reference to all corresponding Uniform Trust Code provisions (UTC commentary should be helpful in construing the Florida UTC in the absence of Florida appellate opinions), a cross reference from new Chapter 736 to old Chapter 737, a cross reference from old Chapter 737 to new Chapter 736, and an appendix of effective dates for various sections within the new Florida UTC.
- Prof. Powell’s two Florida Bar Journal Articles explaining the Florida UTC. Florida State University Law Professor David F. Powell was the scrivener for the Ad Hoc Trust Law Committee of the Florida Bar that drafted the Florida UTC.
- The UTC Reporter’s Summary of the Florida UTC.

The Florida’s adoption of the UTC also facilitates the provision of trustee services by banks operating in multiple jurisdictions (which has become the norm in recent U.S. history). **This is good for bankers and Florida’s “trust industry” in general.** This point was made in a recent article published by Yale Law Professor John H. Langbein entitled *Why Did Trust Law Become Statute Law in the United States?* The following excerpt from Prof. Langbein’s article sums up this view:<sup>10</sup>

In the United States, the management trust has been closely associated with the rise of what we now commonly call **the trust industry**, that is, the organizations of fee-paid professionals who provide trusteeship services. In contrast to England, where lawyers (mostly solicitors) have tended to be the characteristic professional fiduciaries, **in the United States (for reasons that I have not seen explained), it was the banking industry that captured the field.** The typical American professional fiduciary is a bank trust department. Until recent decades, American banking tended to be localized. Banks have been politically powerful, and they have been able to use their influence to get the state legislatures to enact measures that permitted the rise of the management trust. . . .

In more recent times, as the barriers to multistate banking have fallen, large banks have found themselves doing trust business in many states. **These firms have an interest in seeing trust law become as uniform as possible, both to simplify compliance with local law and to facilitate the movement of personnel across state lines as business needs dictate. The trust banking industry has in general welcomed legislatively driven consolidation of trust law.** The several Uniform Acts in the trust field, now culminating in the Uniform Trust Code, reflect the increasing national consolidation of the trust banking industry.

(Emphasis added; internal citations omitted.)

- b. **Selected Florida UTC Provisions.** The following are selected provisions of the Florida UTC that should be of special interest to Florida bankers, professionals and their clients.

i. **Trust Advisors (Fla. Stat. §736.0808):**

A client may want to allow advisors to assist the trustee in making certain decisions, or to hold certain significant powers, such as the power to amend or revoke the trust, or direct the trustee with respect to investment decisions affecting the trust fund; this is similar to a **“Trust Protector”** sometimes used in other jurisdictions. The new Florida UTC does not use the term “Trust Protector” as such, instead placing this provision in the section dealing with powers of the trustee, and using the term “the holder of a power to direct.” Fla. Stat. §736.0808.

Florida's trust protector statute is modeled on UTC § 808. With respect to limiting trustee liability, the commentary to UTC § 808 provides as follows:

*“Powers to direct are most effective when the trustee is not deterred from exercising the power by fear of possible liability. On the other hand, the trustee does have overall responsibility for seeing that the terms of the trust are honored. For this reason, [this subsection] imposes only minimal oversight responsibility on the trustee. A trustee must generally act in accordance with the direction. A trustee may refuse the direction only if the attempted exercise would be **manifestly contrary** to the terms of the trust or the **trustee knows** the attempted exercise would constitute a **serious breach of a fiduciary duty** owed by the holder of the power to the beneficiaries of the trust.”*  
(Emphasis added.)

ii. **“Designated Representatives” (Fla. Stat. §736.0306):**

The Florida UTC offers planning opportunities regarding “difficult” beneficiaries (*e.g.*, drug addicted or mentally disabled children) by allowing the client to name a “Designated Representative” to receive notices and accountings and behalf of one or more beneficiaries. This provision is not found in the UTC.

Within limits discussed below, this section allows a settlor to appoint or designate a person to represent and bind a trust beneficiary or to receive notices, information, reports, and accounts on the beneficiary's behalf. There are two limits. The first is that a designated representative who is also a trustee may not represent or bind a trust beneficiary while serving in that capacity. The second applies to designated representatives who are also beneficiaries of the trust. Although there is no blanket prohibition on a beneficiary serving as a designated representative, the Florida UTC does restrict the situations where this is allowed. A beneficiary may serve as a designated representative only if the beneficiary is designated by the settlor by name (as opposed to by others pursuant to a process detailed in the trust instrument) or the designated representative/beneficiary is a spouse, grandparent, or descendant of a grandparent of either the beneficiary being represented or that beneficiary's spouse.

### iii. Trust Situs (Fla. Stat. §736.0108):

The Florida UTC imposes a duty on a trustee to administer the trust at a place that is appropriate to its purposes and administration. Subject to that duty, upon appropriate notice to the qualified beneficiaries, a trustee may move a trust's principal place of administration to another state or jurisdiction.

In the absence of a valid designation in the trust instrument, §736.0108 retains existing Florida statutory law which provides that a trust's principal place of administration is the trustee's usual place of business, if any; otherwise the trustee's residence. *See* §736.0108(2). In addition, the section validates trust provisions designating a principal place of administration, provided the designated jurisdiction has a sufficient nexus to the trust or its beneficiaries. The nexus requirement is satisfied if the designated jurisdiction is the trustee's residence or principal place of business or a jurisdiction where all or part of the administration occurs. Other jurisdictions are judged on a case by case basis. *See* §736.0108(1).

The Florida UTC provision addressing trust situs is based upon UTC § 108. The following are excerpts from the commentary to UTC § 108:

*“A settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust. Under subsection (a), a designation in the terms of the trust is controlling if (1) a trustee is a resident of or has its principal place of business in the designated jurisdiction, or (2) all or part of the administration occurs in the designated jurisdiction. Designating the principal place of administration should be distinguished from designating the law to determine the meaning and effect of the trust's terms, as authorized by Section 107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust's provisions.”*

\* \* \* \* \*

*“Subsections (c)-(f) provide a procedure for changing the principal place of administration to another state or country. Such changes are often beneficial. A change may*

*be desirable to secure a lower state income tax rate, or because of relocation of the trustee or beneficiaries, the appointment of a new trustee, or a change in the location of the trust investments. The procedure for transfer specified in this section applies only in the absence of a contrary provision in the terms of the trust. See Section 105. To facilitate transfer in the typical case, where all concur that a transfer is either desirable or is at least not harmful, a transfer can be accomplished without court approval unless a qualified beneficiary objects. To allow the qualified beneficiaries sufficient time to review a proposed transfer, the trustee must give the qualified beneficiaries at least 60 days prior notice of the transfer. Notice must be given not only to qualified beneficiaries as defined in Section 103(13) but also to those granted the rights of qualified beneficiaries under Section 110. To assure that those receiving notice have sufficient information upon which to make a decision, minimum contents of the notice are specified. If a qualified beneficiary objects, a trustee wishing to proceed with the transfer must seek court approval.”*

#### **iv. Transaction Empowerment**

Historically, third parties doing business with trustees had a duty to independently verify that the trustee was authorized to enter into the subject transaction. Florida UTC section **736.1016** eliminates this duty. Additionally, under common law, trustees were very limited in their authority to engage in business transactions. A primary goal of new uniform trust legislation like the UTC was to equip trustees as a matter of default law with essentially unlimited transaction authority. Florida UTC sections **736.0815** and **736.0816** codify this regime.

#### **v. Allocating Expenses and Receipts**

A trust containing financial assets requires the trustee to pay a great deal of attention to apportioning the receipts and expenses of a trust between or among different classes of beneficiaries (typically life and remainder interests). Codifying fiduciary law on this point allowed for the development of sound default rules for allocating such receipts and expenses. A prefatory note to the UTC recognizes that the Uniform Principal and Income Act ("UPI") accomplished this goal, and that "a jurisdiction enacting the revised Uniform Principal and Income Act may wish to include it either as part of this Code or as part of its probate laws." Florida

incorporated its version of the UPI into stand alone **Chapter 738** of the Florida Statutes.

**vi. Facilitating Pooled Investments (Fla. Stat. §736.0802(g))**

Under common law, trustees were barred from pooling funds from different trusts for investment purposes. In today's world, pooling trust-fund investments via mutual funds and other similar financial products needed to build an adequately diversified investment portfolio is a must. Florida UTC section **736.0802(g)** facilitates mutual-fund investing by expressly overriding existing common law and authorizing bank trust departments to invest in affiliated mutual funds.

**vii. Fiduciary Investments (Fla. Stat. §736.0901)**

Under common law, trustees were very limited in the types of assets they could invest in. This approach makes perfect sense if most trusts only own real property, it simply does not work in today's world where most trusts are invested in marketable securities and managed in accordance with the "modern portfolio theory." Florida UTC section **736.0901** recognizes that the Florida Uniform Prudent Investor Act previously overrode the common law on this point by simply cross referencing to Florida Statutes Chapter 518.

**viii. Spendthrift Protection (Fla. Stat. §736.0502):<sup>11</sup>**

Florida law has long given full effect to spendthrift provisions, except for certain specific types of obligations, such as alimony and child support. Fla. Stat. §736.0503. *See Waterbury v. Munn*, 32 So.2d 603 (Fla. 1947); *Bacardi v. White*, 463 So.2d 218 (Fla. 1985).

Florida UTC §736.0502 gives statutory recognition to spendthrift provisions.<sup>12</sup> To be effective, a spendthrift provision must restrain both voluntary and involuntary transfer of a beneficiary's interest.<sup>13</sup> Assuming that is the case, a beneficiary may not transfer his or her beneficial interest in the trust and, with two exceptions discussed next, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before it is received by the beneficiary. Fla. Stat. §736.0502(3).

The first exception applies to overdue mandatory distributions. Although a spendthrift provision prevents a beneficiary's creditor from attaching or garnishing the beneficiary's interest in a trust, it

does not protect trust income or principal after it has been distributed to the beneficiary. For that reason, a sympathetic trustee might be tempted to delay required distributions to spendthrift beneficiaries to frustrate or impede the beneficiaries' creditors' efforts to reach the distributions. Fla. Stat. §736.0506 is intended to prevent this. Under the section, whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution that the trustee does not make within a reasonable time. For this purpose, a mandatory distribution is a distribution of income or principal that the trustee is required to make under the terms of the trust, including a distribution on termination of the trust. The term does not encompass discretionary distributions of any sort.<sup>14</sup>

The second exception relates to so-called "exception creditors." When it comes to the effectiveness of spendthrift provisions, not all creditors are created equal. For public policy reasons, some creditors may proceed against a beneficiary's interest in a trust even though the trust includes a spendthrift clause. Thus, §736.0503(2) provides "last resort" exceptions<sup>15</sup> for claims by a beneficiary's child, spouse or former spouse for support or maintenance and for a judgment creditor (such as an attorney) who has provided services for the protection of a beneficiary's interest in the trust. In addition, §736.0503(2) provides an exception for claims by a state or the U.S., but only to the extent provided in a statute separate from the Florida UTC.

The fact that spendthrift clauses are unenforceable against these exception creditors means only that these creditors have remedies against a beneficiary's interest similar to those of creditors of beneficiaries with interests in a trust that does not include a spendthrift provision. That is, exception creditors may attach present or future distributions to or for the benefit of the beneficiary.<sup>16</sup> They cannot, however, compel distributions from or otherwise reach beneficial interests in discretionary trusts.

**ix. Trustee’s Discretion to Pay Taxes on Income of Grantor Trust (Fla. Stat. §736.0505(1)(c)): <sup>17</sup>**

A grantor trust is a special category of trust, the income and deductions of which are taxed directly to the settlor as if the settlor owned the trust assets. Grantor trust status is frequently tax efficient because of the compressed brackets that apply to ordinary trusts. In crafting a grantor trust, it can be desirable to give the trustee discretion to pay the taxes imposed on the settlor under the Internal Revenue Code, either directly or indirectly by reimbursing the settlor for taxes paid by him or her. Section 736.0505(1)(c) of the FTC provides assurance that including such a discretion will not, in and of itself, subject the trust to the settlor’s creditors under the maximum invasion principle discussed above.

**c. Unitrust Conversion/Power to Adjust (Fla. Stat. §738.104 and §738.1041): <sup>18</sup>**

Conflicts between current beneficiaries of a trust that want to maximize current income distributions and remainder beneficiaries of a trust that want to maximize their remainder interest are at the core of almost all disputes involving a trust’s administration. In the past the best trustees could do to manage this inevitable conflict was to invest trust assets in income producing securities (*e.g.*, bonds) while also trying to ensure an acceptable level of capital appreciation for the remainder beneficiaries. This type of investing inevitably leads to lower overall growth of the trust’s portfolio.

Savvy use of Florida’s Principal and Income Act can deliver a win-win solution to this age old conundrum. Here’s how:

- First, increase the anticipated remainder interest of the trust by investing the trust’s portfolio in accordance with the Modern Portfolio Theory. This investment approach is in stark contrast to traditional trust investment approaches that artificially skewed portfolios in favor of high income producing assets (*e.g.*, bonds).
- Second, increase current distributions to the income beneficiaries by relying on the authority granted under **Fla. Stat. §738.104** to make adjustments between principal and income or the authority granted under **Fla. Stat. §738.1041** to convert the trust into a “unitrust.”

This solution works because investing in accordance with the Modern Portfolio Theory increases the size of the trust “pie,” thereby creating win-win options for all concerned.

Using a case-study approach the authors of *The Appropriate Withdrawal Rate: Comparing a Total Return Trust to a Principal and Income Trust*, 31 ACTEC J. 118 (2005), do a great job of explaining in plain English how a trustee can both increase current distributions and deliver a higher expected return to the remaindermen using the solution outlined above.

**d. Mandatory Arbitration of Trust and Estates Disputes Authorized by Statute (Fla. Stat. §731.401):**

Effective July 1, 2007, Florida became one of the few states that expressly authorized mandatory arbitration clauses in wills and trusts. Two of the Florida attorneys instrumental in passage of the new legislation, Bruce M. Stone and Robert W. Goldman, also co-authored a 2005 ACTEC article discussing mandatory arbitration clauses in wills and trusts entitled *Resolving Disputes with Ease and Grace*. The ACTEC article contains sample arbitration clauses for wills-and-trusts disputes. The American Arbitration Association's website also contains a sample arbitration clause for wills-and-trusts disputes.<sup>19</sup>

**e. Florida's Probate Code.**

Although not directly related to trust fund competition, Florida is also competitive from a probate administration perspective. Florida was one of only 16 states that adopted the original 1969 version of the Uniform Probate Code, which streamlined the probate process and standardized and modernized the various state laws governing wills, trusts, and intestacy. Florida's court system also compares favorably. Florida courts have a specially-designated probate division staffed by judges who only adjudicate probate-related matters.

Florida's probate code was the subject of favorable commentary by one of the nation's leading academic authorities in the trusts-and-estates field, Yale Law professor John H. Langbein. In published testimony to the Connecticut legislature in 2005 Prof. Langbein testified that **Florida** has a "responsible probate system" that compares very favorably to Connecticut's system. In fact, the good professor had the following sage words of advice for the citizens of his fair state:

*"When citizens of our state ask me about Connecticut probate, I give this simple advice: Try not to die in Connecticut. If you are a person of means, you should--late in life--establish your domicile in some place such as **Florida** or Maine or Arizona that has a responsible probate system. You can still own a Connecticut home and spend plenty of time here. Indeed, if you place title to your Connecticut home in a **Florida** trust, your trustee can even*

*transfer the house after your death without going through Connecticut probate.”<sup>20</sup>*

**4. Florida’s trusts-and-estates bar and bankers’ associations continuously press for new competitive legislation.**

- a. **Case study:** Florida Bankers Association pushes for new “Directed Trusts” legislation.

The Florida UTC provision providing for “Trust Advisors” (Fla. Stat. §736.0808), which is similar to a “Trust Protector” sometimes used in other jurisdictions, has been the subject of some criticism by Florida corporate fiduciaries because a directed trustee may be obligated to devote considerable resources to ensure that the directing person’s action is not “manifestly contrary to the terms of the trust” or “a serious breach of a fiduciary duty.” Delaware’s directed-trust statute is arguably more protective of trustees. For an excellent white paper discussing Delaware’s directed-trust statute vs. the Florida UTC approach, see *Directed Trusts: Can Directed Trustees Limit Their Liability?* (March 27, 2007) by Richard W. Nenno, Managing Director and Trust Counsel, Wilmington Trust Company.<sup>21</sup>

A recent *LawyersUSA* article entitled *Family trusts branch out* addressed the growing prevalence of directed-trust legislation and, most importantly, how Florida is reacting to this competitive pressure. The following excerpt from *Family trusts branch out* is indicative:<sup>22</sup>

Experts estimate that by the middle of this century, the largest intergenerational wealth transfer in the United States - more than \$41 trillion - will have taken place.

**Competing to capture the lucrative family trust business, states are revamping their trust statutes to offer tax breaks and encourage the use of multiple trust advisers.** [Florida is one of the] 20 states that have adopted the Uniform Trust Code, which allows trustees to delegate duties to co-trustees and agents, and generally provides that trustees are exempt from liability for others’ actions, except in cases of a “serious breach of trust.”

About 10 states have adopted “directed trusts” statutes that specifically authorize the appointment of co-trustees and advisers for investment, management and distribution duties.

South Dakota and Delaware, which are considered to have the strongest directed trust statutes, eliminate liability for a trustee who

follows instructions from an adviser appointed in the trust agreement to make investment or distribution decisions.

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Bruce Stone, a trusts and estates lawyer and shareholder at Goldman, Felcoski & Stone in Coral Gables, Fla., said directed trusts can . . . be used for running closely held family businesses.

“A corporate trustee doesn’t want to get involved in running a closely held business, and families don’t want corporate trustees interfering in a lot of their decisions,” he commented. “The solution is that with a directed trust, the corporate trustee only has to do certain things.”

[Joan Crain, senior director of wealth management strategies at BNY Mellon Wealth Management in Fort Lauderdale,] agreed: “The family wants a corporate trustee to do all the important things - like tax returns, compliance - so the directed trust is the answer, because by statute, you can relieve the trustee of liability and responsibility for holding those assets.”

**Crain is the chair of a Florida Bankers’ Association Trust legislative committee, which expects to introduce a bill next year proposing a directed trustee statute in Florida.**

**“It’s a competitive issue,” she said. “I personally have lost trust business because Florida doesn’t have a directed trustee statute.”**

Florida’s existing trust laws “don’t go far enough in insulating a trustee,” Crain said.

“You still have the duty to oversee, to monitor, to intervene,” she noted. “The directed trustee statutes in the few states that have strong ones are explicit as to the lack of responsibility on the part of the trustee for reviewing the actions of the investment manager.”

(Emphasis added.)

## BONUS MATERIAL IN HONOR OF STEP'S UK ROOTS:

### *You're Disinherited!*

Proving once again that the trans-Atlantic exchange of tacky pop culture ideas is alive and well, Sir Benjamin Slade, British aristocrat and heir to a \$13 million estate, has decided to leave his sizable estate to someone in the U.S., but he doesn't just want to give his estate away to any old Yank, he wants a group of hardy souls to trek to his 13th-century manor house in North Newton, England, and allow themselves to be "ejected," apparently while being filmed for TV, from contention with his own variation on "The Donald's" now-famous you're fired line: "You're disinherited!"

The following is an excerpt from a March 7, 2006, NY Times article entitled *Seeking a Willing Heir, an Aristocrat Turns to America* reporting on Sir Slade's unorthodox estate planning methods (note the litigation angle):<sup>23</sup>

NORTH NEWTON, England, March 2 — WANTED: Heir for \$13 million estate, including 13th-century manor house, in bucolic Somerset. Must be able to pay \$140,000 annual upkeep and meet incidental costs of, for example, repairing the driveway (\$70,000) and fixing the stables (\$1 million).

Also, "He can't be a drug addict," said Sir Benjamin Slade, the current owner of the estate and its manor, Maunsel House, which has been in the family since 1772. "He can't be a Communist. It's politically incorrect to say so, but he can't be gay, because he may not produce any children."

The problem, said Sir Benjamin, who is 59 and childless himself, is that none of his army of relatives is willing to take on the property when he dies. So he is searching for an heir in America, where some Slades settled in the 18th century.

"Americans have more energy and a better work ethic," he said, sipping tea in his sumptuous library. ("There are no bookcases, because my family was illiterate," he said.) Paintings of ancestors plastered the walls; a fire roared in the hearth; a leak dripped steadily from the ceiling.

Sir Benjamin has a ready store of scandalous stories about his ancestors, to whom he refers in the first-person plural. Many of his tales have to do with the Slade habit of losing money in inheritance-related disputes. The hardest fought of these, perhaps, was between a set of male Slade twins in the 19th century, only one of whom could be the heir.

"The problem was that no one knew who popped out first," Sir Benjamin said. **The ensuing suit** — *Slade v. Slade* — **cost a fortune in legal fees**, adding to the family's financial woes. **"We were absolutely stuffed,"** Sir Benjamin said.

He got the idea for the heir hunt when an American television company, researching a program about Britons' American relatives, got in touch.

The television company — which Sir Benjamin said has asked him not to discuss too many details — is now hoping to turn the search into an “Apprentice”-style reality program, in which potential heirs would live at Maunsel House and undergo a series of challenges, with Sir Benjamin eliminating them one by one.

Sir Benjamin is looking forward to ejecting the losers with his own aristocratic catchphrase: “You’re disinherited.”

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## END NOTES

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<sup>1</sup> **Juan C. Antúnez** is a partner with the law firm of Stokes McMillan Maracini & Antúnez P.A. and also the author of THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)). Mr. Antúnez is a graduate of Florida International University's business school (B.A. in finance with honors), the New York University School of Law (J.D.), and the University of Miami School of Law (LL.M. in Estate Planning). In 2005, Mr. Antúnez was named by Florida Trend Magazine as one of Florida's "Best Up-and-Coming Attorneys". Mr. Antúnez's past travels in the law include a stint as Associate General Counsel for Telemundo, a national Spanish-language television network headquartered in South Florida. Prior to law school Mr. Antúnez volunteered for service in the United States Marine Corps Reserve from 1987 to 1993 (4th ANGLICO, West Palm Beach, Florida), including combat duty during the Gulf War.

<sup>2</sup> Effective January 1, 2007, Florida repealed the annual tax on intangible personal property such as stocks, bonds, mutual funds, money market funds, and unsecured notes.

<sup>3</sup> Florida's rule against perpetuities is found in F.S. § 689.225. This statute was amended in 2000 to allow dynasty trusts in Florida to remain in effect for up to 360 years.

<sup>4</sup> A copy of the study is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "Dynasty Trusts estimated to hold roughly \$100 billion in trust funds" at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-dynasty-trusts-estimated-to-hold-roughly-100-billion-in-trust-funds.html>.

<sup>5</sup> Estate Planning Journal (Feb 2006), Estate Planning Journal (WG&L).

<sup>6</sup> Estate Planning Journal (Feb 2006), Estate Planning Journal (WG&L).

<sup>7</sup> A detailed account of this case is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "North Carolina tax attorney cleared of all tax-fraud charges related to off shore trust scheme" at <http://www.flprobatelitigation.com/ethics-north-carolina-tax-attorney-cleared-of-all-tax-fraud-charges-related-to-off-shore-trust-scheme.html>.

<sup>8</sup> *Id.*

<sup>9</sup> The listed materials available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "Florida's New Trust Code" at <http://www.flprobatelitigation.com/probate-guardianship-statues-floridas-new-trust-code.html>.

<sup>10</sup> A link to *Why Did Trust Law Become Statute Law in the United States?* is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "Why Did Trust Law Become Statute Law in the United States?" at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-why-did-trust-law-become-statute-law-in-the-united-states.html>.

<sup>11</sup> My discussion of the Florida UTC's treatment of spendthrift clauses is based almost verbatim on Prof. Powell's excellent July 2006 Florida Bar Journal article entitled "The New Florida Trust Code, Part 1", a link to which is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "Florida's New Trust Code" at <http://www.flprobatelitigation.com/probate-guardianship-statues-floridas-new-trust-code.html>.

<sup>12</sup> No special language is necessary to create a spendthrift trust. A trust term to the effect that beneficial interests are subject to a spendthrift trust or words of similar import is sufficient to do the trick. §736.0502(2).

<sup>13</sup> Fla. Stat. §736.0502(1). This requirement may be a departure from current law. As such, it applies only to trusts created after July 1, 2007, the effective date of the Florida UTC.

<sup>14</sup> It is immaterial for this purpose that the discretion is subject to a standard or that it is coupled with language of direction. §736.0506(1).

<sup>15</sup> The Florida UTC's "last resort" requirement differs from that established by the Florida Supreme Court in its 1985 decision, *Bacardi v. White*, 463 So. 2d 218 (Fla. 1985), in that the Florida UTC requires only a single initial showing that traditional remedies are inadequate.

<sup>16</sup> See §736.0503(3). This subsection also preserves the existing procedures available under the Uniform Interstate Family Support Act. See Fla. Stat. Ch. 88.

<sup>17</sup> My discussion of the Florida UTC's treatment of grantor trusts is based verbatim on Prof. Powell's excellent July 2006 Florida Bar Journal article entitled "The New Florida Trust Code, Part 1", a link to which is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled "Florida's New Trust Code" at <http://www.flprobatelitigation.com/probate-guardianship-statues-floridas-new-trust-code.html>.

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<sup>18</sup> A copy of the cited ACTEC article is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “Win-Win Trust Administration: How to please BOTH current income beneficiaries and remaindermen” at <http://www.flprobatelitigation.com/will-and-trust-contests-awinwina-trust-administration-how-to-please-both-current-income-beneficiaries-and-remaindermen.html>.

<sup>19</sup> A copy of the cited ACTEC article and a link to the specific AAA website page dealing with wills-and-trusts arbitration is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “New Florida legislation expressly authorizes mandatory arbitration clauses in wills and trusts” at <http://www.flprobatelitigation.com/will-and-trust-contests-new-florida-legislation-expressly-authorizes-mandatory-arbitration-clauses-in-wills-and-trusts.html>.

<sup>20</sup> A complete copy of Prof. Langein’s published testimony is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “Don’t Die In Connecticut: Move to Florida” at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-dont-die-in-connecticut-move-to-florida.html>.

<sup>21</sup> A link to Mr. Neno’s white paper is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “Are “directed trusts” coming to Florida?” at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-are-directed-trusts-coming-to-florida.html>.

<sup>22</sup> Links to the *LawyersUSA* article and the directed-trust legislation proposed by the Florida Bankers Association are available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “Are ‘directed trusts’ coming to Florida?” at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-are-directed-trusts-coming-to-florida.html>.

<sup>23</sup> A link to the quoted NY Times article is available on THE FLORIDA PROBATE LITIGATION BLOG ([www.flprobatelitigation.com](http://www.flprobatelitigation.com)) under the blog post entitled “You’re Disinherited!” at <http://www.flprobatelitigation.com/trust-and-estates-litigation-in-the-news-youare-disinherited.html>.