

1 A bill to be entitled
2 An act relating to trusts and trust powers;
3 creating s. 737.2035, F.S.; providing for costs
4 and attorney's fees in trust proceedings;
5 providing applicability; requiring attorneys to
6 give notice to trustees in specified
7 circumstances; allowing courts to adjust
8 attorney's fees when notice is late amending s.
9 737.306, F.S.; revising standards governing
10 when a successor trustee is not under a duty to
11 institute an action against a prior trustee or
12 the prior trustee's estate; providing an
13 effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 737.2035, Florida Statutes, is
18 created to read:

19 737.2035 Costs and attorney's fees in trust
20 proceedings.--

21 (1) In all trust proceedings, costs may be awarded as
22 in chancery actions.

23 (2) Any attorney who has rendered services to a trust
24 may apply to the court for an order awarding attorney's fees,
25 and, after notice and service upon the trustee and all
26 beneficiaries entitled to an accounting under s. 737.303, the
27 court shall enter its order on the fee application.

28 (3) When costs and attorney's fees are to be paid out
29 of the trust, the court may, in its discretion, direct from
30 what part of the trust they shall be paid.

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1 (4) The provisions of this section shall apply only to
2 services of an attorney rendered on or after July 1, 1999.

3 (5) Except when a trustee's interest may be adverse in
4 a particular matter, the attorney shall give reasonable notice
5 in writing to the trustee of the attorney's retention by an
6 interested person and the attorney's entitlement to fees
7 pursuant to this section. A court may reduce any fee award
8 for services rendered by the attorney prior to the date of
9 actual notice to the trustee, if the actual notice date is
10 later than a date of reasonable notice. In exercising this
11 discretion, the court may exclude compensation for services
12 rendered after the reasonable notice date but prior to the
13 date of actual notice.

14 Section 2. Subsection (3) of section 737.306, Florida
15 Statutes, is amended, and subsection (5) is added to said
16 section, to read:

17 737.306 Personal liability of trustee.--

18 (3) A successor trustee ~~succeeding a trustee who was~~
19 ~~also the grantor of the trust~~ is not personally liable for any
20 action taken or omitted to be taken by any such prior trustee;
21 nor does any such successor trustee have a duty to institute
22 any action against any such prior trustee, or file any claim
23 against any such prior trustee's estate, for any of the prior
24 trustee's acts or omissions as trustee under any of the
25 following circumstances: ~~This subsection applies only with~~
26 ~~respect to a trust that is revocable during the time that the~~
27 ~~grantor serves as trustee.~~

28 (a) The successor trustee succeeds a trustee who was
29 also the grantor of a trust that was revocable during the time
30 that the grantor served as trustee;

1 (b) As to any beneficiary who has waived any
2 accounting required by s. 737.303, but only as to the periods
3 included in such waiver;

4 (c) As to any beneficiary who has released the
5 successor trustee from such duty to institute any action or
6 file any claim;

7 (d) As to any person who is not a beneficiary within
8 the meaning of s. 737.303(4)(b); or

9 (e) As to any beneficiary described in s.
10 737.303(4)(b):

11 1. If a super majority of the reasonably ascertainable
12 current income or principal beneficiaries described in s.
13 737.303(4)(b)1. and a super majority of the reasonably
14 ascertainable remainder beneficiaries described in s.
15 737.303(4)(b)2. have released the successor trustee;

16 2. If the beneficiary has not delivered a written
17 request to the successor trustee to institute an action or
18 file a claim against the prior trustee within 6 months after
19 the date of the successor trustee's acceptance of the trust,
20 if the successor trustee has notified the beneficiary in
21 writing of its acceptance in accordance with s. 737.303(1) and
22 such writing advises the beneficiary that, unless the
23 beneficiary delivers such written request within 6 months
24 after the date of acceptance, his or her right to proceed
25 against the successor trustee will be barred pursuant to this
26 section; or

27 3. For any action or claim that the beneficiary is
28 barred from bringing against the prior trustee.

29 (5) For the purposes of this section, a super majority
30 of beneficiaries means at least two-thirds in interest of the
31 beneficiaries if the interests of the beneficiaries are

1 reasonably ascertainable; otherwise, it means at least
2 two-thirds in number of the beneficiaries. A release or waiver
3 under this section may be exercised by a legal representative
4 or natural guardian of the beneficiary without the filing of
5 any proceeding or approval of any court. Nothing in subsection
6 (3) affects any liability of the prior trustee or the right of
7 the successor trustee or any beneficiary to pursue an action
8 or claim against the prior trustee.

9 Section 3. This act shall take effect July 1, 1999.

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