

1 A bill to be entitled
2 An act relating to trust administration; amending s.
3 733.607, F.S.; limiting a personal representative's
4 entitlement to payment from a trust of certain estate
5 expenses and obligations; specifying application of
6 certain criteria in making certain payments from a trust;
7 amending s. 733.707, F.S.; specifying application of
8 additional provisions to liability for certain estate
9 expense and obligation payments from a trust; amending s.
10 736.0206, F.S.; deleting certain notice requirements
11 relating to court review of a trustee's employment of
12 certain persons; authorizing the award of expert witness
13 fees from trust assets rather than requiring the award of
14 such fees; providing a limitation; amending s. 736.0505,
15 F.S.; revising a value criterion for determining the
16 extent of treating the holder of a power of withdrawal as
17 the settlor of a trust; providing criteria for determining
18 who contributed certain trust assets under certain
19 circumstances; amending s. 736.05053, F.S.; requiring
20 application of priorities for pro rata abatement of
21 nonresiduary trust dispositions together with nonresiduary
22 devises; amending s. 736.1007, F.S.; deleting authority
23 for a court to determine an attorney's compensation;
24 deleting certain expert testimony and fee payment
25 provisions; deleting requirements for certain court
26 compensation determination proceedings to be part of a
27 trust administration process and for court determination

HB 361

2010

28 and payment of certain estate costs and fees from trust
 29 assets; providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

33 Section 1. Subsection (2) of section 733.607, Florida
 34 Statutes, is amended to read:

35 733.607 Possession of estate.—

36 (2) If, after providing for statutory entitlements and all
 37 devises other than residuary devises, the assets of the
 38 decedent's estate are insufficient to pay the expenses of the
 39 administration and obligations of the decedent's estate, the
 40 personal representative is entitled to payment from the trustee
 41 of a trust described in s. 733.707(3), in the amount the
 42 personal representative certifies in writing to be required to
 43 satisfy the insufficiency, subject to the exclusions and
 44 preferences under s. 736.05053. The provisions of s. 733.805
 45 shall apply in determining the amount of any payment required by
 46 this section.

47 Section 2. Subsection (3) of section 733.707, Florida
 48 Statutes, is amended to read:

49 733.707 Order of payment of expenses and obligations.—

50 (3) Any portion of a trust with respect to which a
 51 decedent who is the grantor has at the decedent's death a right
 52 of revocation, as defined in paragraph (e), either alone or in
 53 conjunction with any other person, is liable for the expenses of
 54 the administration and obligations of the decedent's estate to

HB 361

2010

55 the extent the decedent's estate is insufficient to pay them as
56 provided in ss. ~~s.~~ 733.607(2) and 736.05053.

57 (a) For purposes of this subsection, any trusts
58 established as part of, and all payments from, either an
59 employee annuity described in s. 403 of the Internal Revenue
60 Code of 1986, as amended, an Individual Retirement Account, as
61 described in s. 408 of the Internal Revenue Code of 1986, as
62 amended, a Keogh (HR-10) Plan, or a retirement or other plan
63 established by a corporation which is qualified under s. 401 of
64 the Internal Revenue Code of 1986, as amended, shall not be
65 considered a trust over which the decedent has a right of
66 revocation.

67 (b) For purposes of this subsection, any trust described
68 in s. 664 of the Internal Revenue Code of 1986, as amended,
69 shall not be considered a trust over which the decedent has a
70 right of revocation.

71 (c) This subsection shall not impair any rights an
72 individual has under a qualified domestic relations order as
73 that term is defined in s. 414(p) of the Internal Revenue Code
74 of 1986, as amended.

75 (d) For purposes of this subsection, property held or
76 received by a trust to the extent that the property would not
77 have been subject to claims against the decedent's estate if it
78 had been paid directly to a trust created under the decedent's
79 will or other than to the decedent's estate, or assets received
80 from any trust other than a trust described in this subsection,
81 shall not be deemed assets of the trust available to the
82 decedent's estate.

83 (e) For purposes of this subsection, a "right of
 84 revocation" is a power retained by the decedent, held in any
 85 capacity, to:

86 1. Amend or revoke the trust and revest the principal of
 87 the trust in the decedent; or

88 2. Withdraw or appoint the principal of the trust to or
 89 for the decedent's benefit.

90 Section 3. Subsections (1), (5), (6), and (7) of section
 91 736.0206, Florida Statutes, are amended to read:

92 736.0206 Proceedings for review of employment of agents
 93 and review of compensation of trustee and employees of trust.—

94 (1) ~~After notice to all interested persons,~~ The court may
 95 review the propriety of the employment by a trustee of any
 96 person, including any attorney, auditor, investment adviser, or
 97 other specialized agent or assistant, and the reasonableness of
 98 any compensation paid to that person or to the trustee.

99 (5) The court may determine reasonable compensation for a
 100 trustee or any person employed by a trustee without receiving
 101 expert testimony. Any party may offer expert testimony after
 102 notice to interested persons. If expert testimony is offered, a
 103 reasonable expert witness fee may ~~shall~~ be awarded by the court
 104 and paid from the assets of the trust unless the court finds
 105 that the expert testimony did not assist the court. The court
 106 shall direct from which part of the trust assets the fee shall
 107 be paid.

108 ~~(6) Persons given notice as provided in this section shall~~
 109 ~~be bound by all orders entered on the complaint.~~

110 ~~(6)~~⁽⁷⁾ In a proceeding pursuant to subsection (2), the
 111 petitioner may serve formal notice as provided in the Florida
 112 Probate Rules, and such notice shall be sufficient for the court
 113 to acquire jurisdiction over the person receiving the notice to
 114 the extent of the person's interest in the trust.

115 Section 4. Paragraph (b) of subsection (2) of section
 116 736.0505, Florida Statutes, is amended, and subsection (3) is
 117 added to that section, to read:

118 736.0505 Creditors' claims against settlor.—

119 (2) For purposes of this section:

120 (b) Upon the lapse, release, or waiver of the power, the
 121 holder is treated as the settlor of the trust only to the extent
 122 the value of the property affected by the lapse, release, or
 123 waiver exceeds the greater of the amount specified in:

124 1. Section 2041(b)(2) or s. 2514(e); or

125 2. Section 2503(b) and, if the donor was married at the
 126 time of the transfer to which the power of withdrawal applies,
 127 twice the amount specified in s. 2503(b),

128
 129 of the Internal Revenue Code of 1986, as amended.

130 (3) Subject to the provisions of s. 726.105, for purposes
 131 of this section, the assets in:

132 (a) A trust described in s. 2523(e) of the Internal
 133 Revenue Code of 1986, as amended, or a trust for which the
 134 election described in s. 2523(f) of the Internal Revenue Code of
 135 1986, as amended, has been made; and

136 (b) Another trust, to the extent that the assets in the
 137 other trust are attributable to a trust described in paragraph
 138 (a),
 139
 140 shall, after the death of the settlor's spouse, be deemed to
 141 have been contributed by the settlor's spouse and not by the
 142 settlor.

143 Section 5. Subsection (5) is added to section 736.05053,
 144 Florida Statutes, to read:

145 736.05053 Trustee's duty to pay expenses and obligations
 146 of settlor's estate.—

147 (5) Nonresiduary trust dispositions shall abate pro rata
 148 with nonresiduary devises pursuant to the priorities specified
 149 in this section and s. 733.805, determined as if the
 150 beneficiaries of the will and trust, other than the estate or
 151 trust itself, were taking under a common instrument.

152 Section 6. Subsections (7) through (10) of section
 153 736.1007, Florida Statutes, are amended to read:

154 736.1007 Trustee's attorney's fees.—

155 ~~(7) The court may determine reasonable attorney's~~
 156 ~~compensation without receiving expert testimony. Any party may~~
 157 ~~offer expert testimony after notice to interested persons. If~~
 158 ~~expert testimony is offered, an expert witness fee may be~~
 159 ~~awarded by the court and paid from the assets of the trust. The~~
 160 ~~court shall direct from what part of the trust the fee is to be~~
 161 ~~paid.~~

162 (7)(8) If a separate written agreement regarding
 163 compensation exists between the attorney and the settlor, the

164 attorney shall furnish a copy to the trustee prior to
 165 commencement of employment and, if employed, shall promptly file
 166 and serve a copy on all interested persons. A separate agreement
 167 or a provision in the trust suggesting or directing the trustee
 168 to retain a specific attorney does not obligate the trustee to
 169 employ the attorney or obligate the attorney to accept the
 170 representation but, if the attorney who is a party to the
 171 agreement or who drafted the trust is employed, the compensation
 172 paid shall not exceed the compensation provided in the
 173 agreement.

174 ~~(9) Court proceedings to determine compensation, if~~
 175 ~~required, are a part of the trust administration process, and~~
 176 ~~the costs, including fees for the trustee's attorney, shall be~~
 177 ~~determined by the court and paid from the assets of the trust~~
 178 ~~unless the court finds the attorney's fees request to be~~
 179 ~~substantially unreasonable. The court shall direct from what~~
 180 ~~part of the trust the fees are to be paid.~~

181 (8)~~(10)~~ As used in this section, the term "initial trust
 182 administration" means administration of a revocable trust during
 183 the period that begins with the death of the settlor and ends on
 184 the final distribution of trust assets outright or to continuing
 185 trusts created under the trust agreement but, if an estate tax
 186 return is required, not until after issuance of an estate tax
 187 closing letter or other evidence of termination of the estate
 188 tax proceeding. This initial period is not intended to include
 189 continued regular administration of the trust.

190 Section 7. This act shall take effect July 1, 2010.