

By Senator Thrasher

8-00958-10

2010998

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

8-00958-10

2010998

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

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

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

37 733.607 Possession of estate.—

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

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

51 733.707 Order of payment of expenses and obligations.—

52 (3) Any portion of a trust with respect to which a decedent
53 who is the grantor has at the decedent's death a right of
54 revocation, as defined in paragraph (e), either alone or in
55 conjunction with any other person, is liable for the expenses of
56 the administration and obligations of the decedent's estate to
57 the extent the decedent's estate is insufficient to pay them as
58 provided in ss. ~~s.~~ 733.607(2) and 736.05053.

8-00958-10

2010998

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

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

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

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

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

87 1. Amend or revoke the trust and reconstitute the principal of

8-00958-10

2010998

88 the trust in the decedent; or

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

91 Section 3. Subsections (1), (5), (6), and (7) of section
92 736.0206, Florida Statutes, are amended to read:

93 736.0206 Proceedings for review of employment of agents and
94 review of compensation of trustee and employees of trust.-

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

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

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

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

116 Section 4. Paragraph (b) of subsection (2) of section

8-00958-10

2010998

117 736.0505, Florida Statutes, is amended, and subsection (3) is
118 added to that section, to read:

119 736.0505 Creditors' claims against settlor.—

120 (2) For purposes of this section:

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

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

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

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

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

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

137 (b) Another trust, to the extent that the assets in the
138 other trust are attributable to a trust described in paragraph
139 (a),

140
141 shall, after the death of the settlor's spouse, be deemed to
142 have been contributed by the settlor's spouse and not by the
143 settlor.

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

8-00958-10

2010998

146 736.05053 Trustee's duty to pay expenses and obligations of
147 settlor's estate.-

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

153 Section 6. Subsections (7) through (10) of section
154 736.1007, Florida Statutes, are amended to read:

155 736.1007 Trustee's attorney's fees.-

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

163 (7)(8) If a separate written agreement regarding
164 compensation exists between the attorney and the settlor, the
165 attorney shall furnish a copy to the trustee prior to
166 commencement of employment and, if employed, shall promptly file
167 and serve a copy on all interested persons. A separate agreement
168 or a provision in the trust suggesting or directing the trustee
169 to retain a specific attorney does not obligate the trustee to
170 employ the attorney or obligate the attorney to accept the
171 representation but, if the attorney who is a party to the
172 agreement or who drafted the trust is employed, the compensation
173 paid shall not exceed the compensation provided in the
174 agreement.

8-00958-10

2010998

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

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

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