

1 A bill to be entitled

2 An act relating to estates; amending s. 732.806, F.S.;
3 specifying that certain restrictions on gifts to
4 lawyers and persons related to such lawyers apply only
5 to written instruments executed on or after a
6 specified date; providing applicability; amending s.
7 733.107, F.S.; providing circumstances under which a
8 burden of proof shifts in cases involving undue
9 influence; amending s. 733.808, F.S.; requiring that a
10 directive to apply certain death benefits for the
11 payment of claims and administration expenses be
12 specified in certain instruments; providing for
13 retroactive applicability; amending s. 736.0207, F.S.;
14 establishing which party bears the burden of proof in
15 an action to contest the validity or revocation of a
16 trust; amending s. 736.05053, F.S.; requiring a
17 specific directive for certain assets and death
18 benefits to be used to pay estate expenses; providing
19 for retroactive applicability; amending s. 736.1106,
20 F.S.; providing for the vesting of outright devises in
21 certain trust documents; providing applicability;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (9) is added to section 732.806,

27 Florida Statutes, to read:

28 732.806 Gifts to lawyers and other disqualified persons.—

29 (9) This section applies only to written instruments
 30 executed on or after October 1, 2013.

31 Section 2. The changes made by this act to s. 732.806,
 32 Florida Statutes, are intended to clarify existing law and are
 33 remedial in nature.

34 Section 3. Section 733.107, Florida Statutes, is amended
 35 to read:

36 733.107 Burden of proof in contests; presumption of undue
 37 influence.—

38 (1) In all proceedings contesting the validity of a will,
 39 the burden shall be upon the proponent of the will to establish
 40 prima facie its formal execution and attestation. A self-proving
 41 affidavit executed in accordance with s. 732.503 or an oath of
 42 an attesting witness executed as required in s. 733.201(2) is
 43 admissible and establishes prima facie the formal execution and
 44 attestation of the will. Thereafter, the contestant shall have
 45 the burden of establishing the grounds on which the probate of
 46 the will is opposed or revocation is sought.

47 (2) In any transaction or event to which the presumption
 48 of undue influence applies, the presumption ~~of undue influence~~
 49 implements public policy against abuse of fiduciary or
 50 confidential relationships and is therefore a presumption
 51 shifting the burden of proof under ss. 90.301-90.304.

52 Section 4. Subsection (4) of section 733.808, Florida

53 Statutes, is amended to read:

54 733.808 Death benefits; disposition of proceeds.—

55 (4) Unless the trust agreement, declaration of trust, or
 56 will expressly refers to this subsection and directs that it
 57 does not apply, death benefits payable as provided in subsection
 58 (1), subsection (2), or subsection (3), unless paid to a
 59 personal representative under the provisions of subsection (3),
 60 shall not be deemed to be part of the decedent's estate, and
 61 shall not be subject to any obligation to pay the expenses of
 62 the administration and obligations of the decedent's estate or
 63 for contribution required from a trust under s. 733.607(2) to
 64 any greater extent than if the proceeds were payable directly to
 65 the beneficiaries named in the trust.

66 Section 5. The changes made by this act to s. 733.808,
 67 Florida Statutes, are intended to clarify existing law, are
 68 remedial in nature, and apply retroactively without regard to
 69 the date of the decedent's death.

70 Section 6. Section 736.0207, Florida Statutes, is amended
 71 to read:

72 736.0207 Trust contests.—

73 (1) In an action to contest the validity or revocation of
 74 all or part of a trust, the contestant has the burden of
 75 establishing the grounds for invalidity.

76 (2) An action to contest the validity of all or part of a
 77 revocable trust, or the revocation of part of a revocable trust,
 78 may not be commenced until the trust becomes irrevocable by its

79 terms or by the settlor's death. If all of a revocable trust has
 80 been revoked, an action to contest the revocation may not be
 81 commenced until after the settlor's death. This section does not
 82 prohibit such action by the guardian of the property of an
 83 incapacitated settlor.

84 Section 7. Subsection (1) of section 736.05053, Florida
 85 Statutes, is amended to read:

86 736.05053 Trustee's duty to pay expenses and obligations
 87 of settlor's estate.—

88 (1) A trustee of a trust described in s. 733.707(3) shall
 89 pay to the personal representative of a settlor's estate any
 90 amounts that the personal representative certifies in writing to
 91 the trustee are required to pay the expenses of the
 92 administration and obligations of the settlor's estate. Payments
 93 made by a trustee, unless otherwise provided in the trust
 94 instrument, must be charged as expenses of the trust without a
 95 contribution from anyone. The interests of all beneficiaries of
 96 such a trust are subject to the provisions of this subsection;
 97 however, the payments must be made from assets, property, or the
 98 proceeds of the assets or property that are included in the
 99 settlor's gross estate for federal estate tax purposes and may
 100 not be made from, other than assets proscribed in s. 733.707(3)
 101 or death benefits described in s. 733.808(4) unless the trust
 102 instrument expressly refers to s. 733.808(4) and directs that it
 103 does not apply, that are included in the settlor's gross estate
 104 for federal estate tax purposes.

105 Section 8. The changes made by this act to s. 736.05053,
 106 Florida Statutes, are intended to clarify existing law, are
 107 remedial in nature, and apply retroactively without regard to
 108 the date of the settlor's death.

109 Section 9. Subsection (5) of section 736.1106, Florida
 110 Statutes, is renumbered as subsection (6) and amended, and a new
 111 subsection (5) is added to that section, to read:

112 736.1106 Antilapse; survivorship with respect to future
 113 interests under terms of inter vivos and testamentary trusts;
 114 substitute takers.—

115 (5) Unless a contrary intent appears in the trust
 116 instrument, subsections (2)-(4) do not apply to an outright
 117 devise that vests upon the death of the settlor unless the
 118 beneficiary is a grandparent, or a lineal descendant of a
 119 grandparent, of the settlor or testator and the beneficiary:

120 (a) Is dead at the time of the execution of the revocable
 121 trust or will;

122 (b) Fails to survive the settlor or testator; or

123 (c) Is required by the inter vivos trust or by operation
 124 of law to be treated as having predeceased the settlor or
 125 testator.

126
 127 A devise in a revocable trust or a testamentary trust that is to
 128 take effect at the death of the settlor or testator does not
 129 vest until the death of the settlor or testator.

130 ~~(6)~~ Subsections (1)-(4) apply to all trusts other than

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131 trusts that were irrevocable before the effective date of this
132 code. Sections 732.603, 732.604, and 737.6035, as they exist on
133 June 30, 2007, continue to apply to other trusts executed on or
134 after June 12, 2003. Subsection (5) applies to those trusts that
135 become irrevocable after June 30, 2014.

136 Section 10. This act shall take effect July 1, 2014.