

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; providing applicability; amending s.  
10 733.808, F.S.; requiring that a directive to apply  
11 certain death benefits for the payment of claims and  
12 administration expenses be specified in certain  
13 instruments; providing for retroactive applicability;  
14 amending s. 736.0207, F.S.; establishing which party  
15 bears the burden of proof in an action to contest the  
16 validity or revocation of a trust; providing  
17 applicability; amending s. 736.05053, F.S.; requiring  
18 a specific directive for certain assets and death  
19 benefits to be used to pay estate expenses; providing  
20 for retroactive applicability; amending s. 736.1106,  
21 F.S.; providing for the vesting of outright devises in  
22 certain trust documents; providing applicability;  
23 providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:  
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27 Section 1. Subsection (9) is added to section 732.806,  
 28 Florida Statutes, to read:

29 732.806 Gifts to lawyers and other disqualified persons.—

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

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

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

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

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

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

53 Section 4. The changes made by this act to s. 733.107,  
54 Florida Statutes, are intended to clarify existing law, are  
55 remedial in nature, and apply retroactively to all proceedings  
56 pending on or before the effective date of this act and to all  
57 cases commenced on or after the effective date of this act.

58 Section 5. Subsection (4) of section 733.808, Florida  
59 Statutes, is amended to read:

60 733.808 Death benefits; disposition of proceeds.—

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

72 Section 6. The changes made by this act to s. 733.808,  
73 Florida Statutes, are intended to clarify existing law, are  
74 remedial in nature, and apply retroactively without regard to  
75 the date of the decedent's death.

76 Section 7. Section 736.0207, Florida Statutes, is amended  
77 to read:

78 736.0207 Trust contests.—

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

82           (2) An action to contest the validity of all or part of a  
 83 revocable trust, or the revocation of part of a revocable trust,  
 84 may not be commenced until the trust becomes irrevocable by its  
 85 terms or by the settlor's death. If all of a revocable trust has  
 86 been revoked, an action to contest the revocation may not be  
 87 commenced until after the settlor's death. This section does not  
 88 prohibit such action by the guardian of the property of an  
 89 incapacitated settlor.

90           Section 8. The changes made by this act to s. 736.0207,  
 91 Florida Statutes, apply to all cases commenced on or after the  
 92 effective date of this act.

93           Section 9. Subsection (1) of section 736.05053, Florida  
 94 Statutes, is amended to read:

95           736.05053 Trustee's duty to pay expenses and obligations  
 96 of settlor's estate.—

97           (1) A trustee of a trust described in s. 733.707(3) shall  
 98 pay to the personal representative of a settlor's estate any  
 99 amounts that the personal representative certifies in writing to  
 100 the trustee are required to pay the expenses of the  
 101 administration and obligations of the settlor's estate. Payments  
 102 made by a trustee, unless otherwise provided in the trust  
 103 instrument, must be charged as expenses of the trust without a  
 104 contribution from anyone. The interests of all beneficiaries of

105 such a trust are subject to the provisions of this subsection;  
106 however, the payments must be made from assets, property, or the  
107 proceeds of the assets or property that are included in the  
108 settlor's gross estate for federal estate tax purposes and may  
109 not be made from, other than assets proscribed in s. 733.707(3)  
110 or death benefits described in s. 733.808(4) unless the trust  
111 instrument expressly refers to s. 733.808(4) and directs that it  
112 does not apply, that are included in the settlor's gross estate  
113 for federal estate tax purposes.

114 Section 10. The changes made by this act to s. 736.05053,  
115 Florida Statutes, are intended to clarify existing law, are  
116 remedial in nature, and apply retroactively without regard to  
117 the date of the settlor's death.

118 Section 11. Subsection (5) of section 736.1106, Florida  
119 Statutes, is renumbered as subsection (6) and amended, and a new  
120 subsection (5) is added to that section, to read:

121 736.1106 Antilapse; survivorship with respect to future  
122 interests under terms of inter vivos and testamentary trusts;  
123 substitute takers.—

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

129 (a) Is dead at the time of the execution of the revocable  
130 trust or will;

131        (b) Fails to survive the settlor or testator; or  
132        (c) Is required by the inter vivos trust or by operation  
133 of law to be treated as having predeceased the settlor or  
134 testator.

135  
136 A devise in a revocable trust or a testamentary trust that is to  
137 take effect at the death of the settlor or testator does not  
138 vest until the death of the settlor or testator.

139        (6)-(5) Subsections (1)-(4) apply to all trusts other than  
140 trusts that were irrevocable before the effective date of this  
141 code. Sections 732.603, 732.604, and 737.6035, as they exist on  
142 June 30, 2007, continue to apply to other trusts executed on or  
143 after June 12, 2003. Subsection (5) applies to those trusts that  
144 become irrevocable after June 30, 2014.

145        Section 12. This act shall take effect July 1, 2014.