

ENROLLED

CS/CS/HB 757

2014 Legislature

1
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:
26

ENROLLED

CS/CS/HB 757

2014 Legislature

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.

ENROLLED

CS/CS/HB 757

2014 Legislature

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.—

ENROLLED

CS/CS/HB 757

2014 Legislature

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

ENROLLED

CS/CS/HB 757

2014 Legislature

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;

ENROLLED

CS/CS/HB 757

2014 Legislature

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.