

By Senator Hukill

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

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 733.107, Florida Statutes, is amended to
24 read:

25 733.107 Burden of proof in contests; presumption of undue
26 influence.—

27 (1) In all proceedings contesting the validity of a will,
28 the burden shall be upon the proponent of the will to establish
29 prima facie its formal execution and attestation. A self-proving

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30 affidavit executed in accordance with s. 732.503 or an oath of
31 an attesting witness executed as required in s. 733.201(2) is
32 admissible and establishes prima facie the formal execution and
33 attestation of the will. Thereafter, the contestant shall have
34 the burden of establishing the grounds on which the probate of
35 the will is opposed or revocation is sought.

36 (2) In any transaction or event to which the presumption of
37 undue influence applies, the presumption ~~of undue influence~~
38 implements public policy against abuse of fiduciary or
39 confidential relationships and is therefore a presumption
40 shifting the burden of proof under ss. 90.301-90.304.

41 Section 2. The changes made by this act to s. 733.107,
42 Florida Statutes, are intended to clarify existing law, are
43 remedial in nature, and shall apply retroactively to all
44 proceedings pending on or before this act becomes a law and all
45 cases commenced on or after the effective date.

46 Section 3. Subsection (4) of section 733.808, Florida
47 Statutes, is amended to read:

48 733.808 Death benefits; disposition of proceeds.-

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

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59 the beneficiaries named in the trust.

60 Section 4. The changes made by this act to s. 733.808,
61 Florida Statutes, are intended to clarify existing law, are
62 remedial in nature, and apply retroactively without regard to
63 the date of the decedent's death.

64 Section 5. Section 736.0207, Florida Statutes, is amended
65 to read:

66 736.0207 Trust contests.—

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

70 (2) An action to contest the validity of all or part of a
71 revocable trust, or the revocation of part of a revocable trust,
72 may not be commenced until the trust becomes irrevocable by its
73 terms or by the settlor's death. If all of a revocable trust has
74 been revoked, an action to contest the revocation may not be
75 commenced until after the settlor's death. This section does not
76 prohibit such action by the guardian of the property of an
77 incapacitated settlor.

78 Section 6. The changes made by this act to s. 736.0207,
79 Florida Statutes, apply to all cases commenced on or after the
80 effective date.

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

83 736.05053 Trustee's duty to pay expenses and obligations of
84 settlor's estate.—

85 (1) A trustee of a trust described in s. 733.707(3) shall
86 pay to the personal representative of a settlor's estate any
87 amounts that the personal representative certifies in writing to

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

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

106 Section 9. Present subsection (5) of section 736.1106,
107 Florida Statutes, is renumbered as subsection (6) and amended,
108 and a new subsection (5) is added to that section, to read:

109 736.1106 Antilapse; survivorship with respect to future
110 interests under terms of inter vivos and testamentary trusts;
111 substitute takers.-

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

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117 (a) Is dead at the time of the execution of the revocable
118 trust or will;
119 (b) Fails to survive the settlor or testator; or
120 (c) Is required by the inter vivos trust or by operation of
121 law to be treated as having predeceased the settlor or testator.

122
123 A devise in a revocable trust or a testamentary trust that is to
124 take effect at the death of the settlor or testator does not
125 vest until the death of the settlor or testator.

126 ~~(6)-(5)~~ Subsections (1)-(4) apply to all trusts other than
127 trusts that were irrevocable before the effective date of this
128 code. Sections 732.603, 732.604, and 737.6035, as they exist on
129 June 30, 2007, continue to apply to other trusts executed on or
130 after June 12, 2003. Subsection (5) applies to those trusts that
131 become irrevocable after June 30, 2014.

132 Section 10. This act shall take effect upon becoming a law.