

By the Committee on Judiciary; and Senator Hukill

590-02447-14

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

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (9) is added to section 732.806,
29 Florida Statutes, to read:

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30 732.806 Gifts to lawyers and other disqualified persons.—

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

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

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

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

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

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

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

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

61 733.808 Death benefits; disposition of proceeds.—

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

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

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

79 736.0207 Trust contests.—

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

83 (2) An action to contest the validity of all or part of a
84 revocable trust, or the revocation of part of a revocable trust,
85 may not be commenced until the trust becomes irrevocable by its
86 terms or by the settlor's death. If all of a revocable trust has
87 been revoked, an action to contest the revocation may not be

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88 commenced until after the settlor's death. This section does not
89 prohibit such action by the guardian of the property of an
90 incapacitated settlor.

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

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

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

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

115 Section 10. The changes made by this act to s. 736.05053,
116 Florida Statutes, are intended to clarify existing law, are

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117 remedial in nature, and apply retroactively without regard to
118 the date of the settlor's death.

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

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

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

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

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

133 (c) Is required by the inter vivos trust or by operation of
134 law to be treated as having predeceased the settlor or 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 upon becoming a law.