

1                   A bill to be entitled  
2           An act relating to estates; creating s. 731.1055,  
3           F.S.; providing that the validity and the effect of a  
4           specified disposition of real property be determined  
5           by Florida law; amending s. 731.106, F.S.; conforming  
6           provisions to changes made by the act; amending s.  
7           736.0802, F.S.; defining the term "pleading";  
8           authorizing a trustee to pay attorney fees and costs  
9           from the assets of the trust without specified  
10          approval or court authorization in certain  
11          circumstances; requiring the trustee to serve a  
12          written notice of intent upon each qualified  
13          beneficiary of the trust before the payment is made;  
14          requiring the notice to contain specified information  
15          and to be served in a specified manner; providing that  
16          specified qualified beneficiaries are entitled to an  
17          order compelling the refund of a specified payment to  
18          the trust; requiring the court to award specified  
19          attorney fees and costs; authorizing the court to  
20          prohibit a trustee from using trust assets to make a  
21          specified payment; authorizing the court to enter an  
22          order compelling the return of specified attorney fees  
23          and costs to the trust with interest at the statutory  
24          rate; requiring the court to deny a specified motion  
25          unless the court finds a reasonable basis to conclude  
26          that there has been a breach of trust; authorizing a

27 court to deny the motion for good cause; authorizing  
 28 the movant to show that a reasonable basis exists, and  
 29 a trustee to rebut the showing, through specified  
 30 means; authorizing the court to impose remedies or  
 31 sanctions; authorizing a trustee to use trust assets  
 32 in a specified manner if a claim or defense of breach  
 33 of trust is withdrawn, dismissed, or judicially  
 34 resolved in a trial court without a determination that  
 35 the trustee has committed a breach of trust; providing  
 36 construction; amending ss. 736.0816 and 736.1007,  
 37 F.S.; conforming provisions to changes made by the  
 38 act; providing an effective date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Section 731.1055, Florida Statutes, is created  
 43 to read:

44 731.1055 Disposition of real property.—The validity and  
 45 effect of a disposition, whether intestate or testate, of real  
 46 property in this state shall be determined by Florida law.

47 Section 2. Subsection (2) of section 731.106, Florida  
 48 Statutes, is amended to read:

49 731.106 Assets of nondomiciliaries.—

50 (2) When a nonresident decedent, whether or not a citizen  
 51 of the United States, provides by will that the testamentary  
 52 disposition of tangible or intangible personal property having a

53 situs within this state, ~~or of real property in this state,~~  
 54 shall be construed and regulated by the laws of this state, the  
 55 validity and effect of the dispositions shall be determined by  
 56 Florida law. The court may, and in the case of a decedent who  
 57 was at the time of death a resident of a foreign country the  
 58 court shall, direct the personal representative appointed in  
 59 this state to make distribution directly to those designated by  
 60 the decedent's will as beneficiaries of the tangible or  
 61 intangible property or to the persons entitled to receive the  
 62 decedent's personal estate under the laws of the decedent's  
 63 domicile.

64 Section 3. Subsection (10) of section 736.0802, Florida  
 65 Statutes, is amended to read:

66 736.0802 Duty of loyalty.—

67 (10) Unless otherwise provided in this subsection, payment  
 68 of costs or attorney ~~attorney's~~ fees incurred in any proceeding  
 69 ~~from the assets of the trust~~ may be made by a ~~the~~ trustee from  
 70 assets of the trust without the approval of any person and  
 71 without court authorization, ~~unless the court orders otherwise~~  
 72 as provided in ss. 736.0816(20) and 736.1007(1) paragraph (b).

73 (a) As used in this subsection, the term "pleading" means  
 74 a pleading as defined in Rule 1.100 of the Florida Rules of  
 75 Civil Procedure.

76 (b) If a trustee incurs attorney fees or costs in  
 77 connection with a claim or defense of breach of trust which is  
 78 made in a filed pleading, the trustee may pay such attorney fees

79 or costs from trust assets without the approval of any person  
80 and without any court authorization. However, the trustee must  
81 serve a written notice of intent upon each qualified beneficiary  
82 of the trust whose share of the trust may be affected by the  
83 payment before such payment is made. The notice of intent need  
84 not be served upon a qualified beneficiary whose identity or  
85 location is unknown to, and not reasonably ascertainable by, the  
86 trustee.

87 (c) The notice of intent must identify the judicial  
88 proceeding in which the claim or defense of breach of trust has  
89 been made in a filed pleading and must inform the person served  
90 of his or her right under paragraph (e) to apply to the court  
91 for an order prohibiting the trustee from using trust assets to  
92 pay attorney fees or costs as provided in paragraph (b) or  
93 compelling the return of such attorney fees and costs to the  
94 trust. The notice of intent must be served by any commercial  
95 delivery service or form of mail requiring a signed receipt; the  
96 manner provided in the Florida Rules of Civil Procedure for  
97 service of process; or, as to any party over whom the court has  
98 already acquired jurisdiction in that judicial proceeding, in  
99 the manner provided for service of pleadings and other documents  
100 by the Florida Rules of Civil Procedure.

101 (d) If a trustee has used trust assets to pay attorney  
102 fees or costs described in paragraph (b) before service of a  
103 notice of intent, any qualified beneficiary who is not barred  
104 under s. 736.1008 and whose share of the trust may have been

105 affected by such payment is entitled, upon the filing of a  
106 motion to compel the return of such payment to the trust, to an  
107 order compelling the return of such payment, with interest at  
108 the statutory rate. The court shall award attorney fees and  
109 costs incurred in connection with the motion to compel as  
110 provided in s. 736.1004.

111 (e) Upon the motion of any qualified beneficiary who is  
112 not barred under s. 736.1008 and whose share of the trust may be  
113 affected by the use of trust assets to pay attorney fees or  
114 costs as provided in paragraph (b), the court may prohibit the  
115 trustee from using trust assets to make such payment and, if  
116 such payment has been made from trust assets after service of a  
117 notice of intent, the court may enter an order compelling the  
118 return of the attorney fees and costs to the trust, with  
119 interest at the statutory rate. In connection with any hearing  
120 on a motion brought under this paragraph:

121 1. The court shall deny the motion unless it finds a  
122 reasonable basis to conclude that there has been a breach of  
123 trust. If the court finds there is a reasonable basis to  
124 conclude there has been a breach of trust, the court may still  
125 deny the motion if it finds good cause to do so.

126 2. The movant may show that such reasonable basis exists,  
127 and the trustee may rebut any such showing, by presenting  
128 affidavits, answers to interrogatories, admissions, depositions,  
129 and any evidence otherwise admissible under the Florida Evidence  
130 Code.

131 (f) If a trustee fails to comply with an order of the  
132 court prohibiting the use of trust assets to pay attorney fees  
133 or costs described in paragraph (b) or fails to comply with an  
134 order compelling that such payment be refunded to the trust, the  
135 court may impose such remedies or sanctions as the court deems  
136 appropriate, including, without limitation, striking the  
137 defenses or pleadings filed by the trustee.

138 (g) Notwithstanding the entry of an order prohibiting the  
139 use of trust assets to pay attorney fees and costs as provided  
140 in paragraph (b), or compelling the return of such attorney fees  
141 or costs, if a claim or defense of breach of trust is withdrawn,  
142 dismissed, or judicially resolved in the trial court without a  
143 determination that the trustee has committed a breach of trust,  
144 the trustee may use trust assets to pay attorney fees and costs  
145 as provided in paragraph (b) and may do so without service of a  
146 notice of intent or order of the court. The attorney fees and  
147 costs may include fees and costs that were refunded to the trust  
148 pursuant to an order of the court.

149 (h) This subsection does not limit proceedings under s.  
150 736.0206 or remedies for breach of trust under s. 736.1001 or  
151 the right of any interested person to challenge or object to the  
152 payment of compensation or costs from the trust.

153 ~~(a) If a claim or defense based upon a breach of trust is~~  
154 ~~made against a trustee in a proceeding, the trustee shall~~  
155 ~~provide written notice to each qualified beneficiary of the~~  
156 ~~trust whose share of the trust may be affected by the payment of~~

157 ~~attorney's fees and costs of the intention to pay costs or~~  
158 ~~attorney's fees incurred in the proceeding from the trust prior~~  
159 ~~to making payment. The written notice shall be delivered by~~  
160 ~~sending a copy by any commercial delivery service requiring a~~  
161 ~~signed receipt, by any form of mail requiring a signed receipt,~~  
162 ~~or as provided in the Florida Rules of Civil Procedure for~~  
163 ~~service of process. The written notice shall inform each~~  
164 ~~qualified beneficiary of the trust whose share of the trust may~~  
165 ~~be affected by the payment of attorney's fees and costs of the~~  
166 ~~right to apply to the court for an order prohibiting the trustee~~  
167 ~~from paying attorney's fees or costs from trust assets. If a~~  
168 ~~trustee is served with a motion for an order prohibiting the~~  
169 ~~trustee from paying attorney's fees or costs in the proceeding~~  
170 ~~and the trustee pays attorney's fees or costs before an order is~~  
171 ~~entered on the motion, the trustee and the trustee's attorneys~~  
172 ~~who have been paid attorney's fees or costs from trust assets to~~  
173 ~~defend against the claim or defense are subject to the remedies~~  
174 ~~in paragraphs (b) and (c).~~

175 ~~(b) If a claim or defense based upon breach of trust is~~  
176 ~~made against a trustee in a proceeding, a party must obtain a~~  
177 ~~court order to prohibit the trustee from paying costs or~~  
178 ~~attorney's fees from trust assets. To obtain an order~~  
179 ~~prohibiting payment of costs or attorney's fees from trust~~  
180 ~~assets, a party must make a reasonable showing by evidence in~~  
181 ~~the record or by proffering evidence that provides a reasonable~~  
182 ~~basis for a court to conclude that there has been a breach of~~

183 ~~trust. The trustee may proffer evidence to rebut the evidence~~  
184 ~~submitted by a party. The court in its discretion may defer~~  
185 ~~ruling on the motion, pending discovery to be taken by the~~  
186 ~~parties. If the court finds that there is a reasonable basis to~~  
187 ~~conclude that there has been a breach of trust, unless the court~~  
188 ~~finds good cause, the court shall enter an order prohibiting the~~  
189 ~~payment of further attorney's fees and costs from the assets of~~  
190 ~~the trust and shall order attorney's fees or costs previously~~  
191 ~~paid from assets of the trust to be refunded. An order entered~~  
192 ~~under this paragraph shall not limit a trustee's right to seek~~  
193 ~~an order permitting the payment of some or all of the attorney's~~  
194 ~~fees or costs incurred in the proceeding from trust assets,~~  
195 ~~including any fees required to be refunded, after the claim or~~  
196 ~~defense is finally determined by the court. If a claim or~~  
197 ~~defense based upon a breach of trust is withdrawn, dismissed, or~~  
198 ~~resolved without a determination by the court that the trustee~~  
199 ~~committed a breach of trust after the entry of an order~~  
200 ~~prohibiting payment of attorney's fees and costs pursuant to~~  
201 ~~this paragraph, the trustee may pay costs or attorney's fees~~  
202 ~~incurred in the proceeding from the assets of the trust without~~  
203 ~~further court authorization.~~

204 ~~(c) If the court orders a refund under paragraph (b), the~~  
205 ~~court may enter such sanctions as are appropriate if a refund is~~  
206 ~~not made as directed by the court, including, but not limited~~  
207 ~~to, striking defenses or pleadings filed by the trustee. Nothing~~  
208 ~~in this subsection limits other remedies and sanctions the court~~



209 ~~may employ for the failure to refund timely.~~

210 ~~(d) Nothing in this subsection limits the power of the~~  
 211 ~~court to review fees and costs or the right of any interested~~  
 212 ~~persons to challenge fees and costs after payment, after an~~  
 213 ~~accounting, or after conclusion of the litigation.~~

214 ~~(e) Notice under paragraph (a) is not required if the~~  
 215 ~~action or defense is later withdrawn or dismissed by the party~~  
 216 ~~that is alleging a breach of trust or resolved without a~~  
 217 ~~determination by the court that the trustee has committed a~~  
 218 ~~breach of trust.~~

219 Section 4. Subsection (20) of section 736.0816, Florida  
 220 Statutes, is amended to read:

221 736.0816 Specific powers of trustee.—Except as limited or  
 222 restricted by this code, a trustee may:

223 (20) Employ persons, including, but not limited to,  
 224 attorneys, accountants, investment advisers, or agents, even if  
 225 they are the trustee, an affiliate of the trustee, or otherwise  
 226 associated with the trustee, to advise or assist the trustee in  
 227 the exercise of any of the trustee's powers and pay reasonable  
 228 compensation and costs incurred in connection with such  
 229 employment from the assets of the trust, subject to s.  
 230 736.0802(10) with respect to attorney fees and costs, and act  
 231 without independent investigation on the recommendations of such  
 232 persons.

233 Section 5. Subsection (1) of section 736.1007, Florida  
 234 Statutes, is amended to read:

235 736.1007 Trustee's attorney ~~attorney's~~ fees.—

236 (1) If the trustee of a revocable trust retains an  
237 attorney to render legal services in connection with the initial  
238 administration of the trust, the attorney is entitled to  
239 reasonable compensation for those legal services, payable from  
240 the assets of the trust, subject to s. 736.0802(10), without  
241 court order. The trustee and the attorney may agree to  
242 compensation that is determined in a manner or amount other than  
243 the manner or amount provided in this section. The agreement is  
244 not binding on a person who bears the impact of the compensation  
245 unless that person is a party to or otherwise consents to be  
246 bound by the agreement. The agreement may provide that the  
247 trustee is not individually liable for the attorney ~~attorney's~~  
248 fees and costs.

249 Section 6. This act shall take effect July 1, 2016.