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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/2R	.	Floor: C
04/22/2021 06:37 PM	.	04/29/2021 12:30 PM
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Senator Bean moved the following:

Senate Amendment

Delete lines 62 - 219
and insert:

5. The personal representative shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

(c) The attorney shall obtain the personal representative's



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12 timely signature acknowledging the disclosures.

13 (d) If the attorney does not make the disclosures required
14 by this section, the attorney may not be paid for legal services
15 without prior court approval of the fees or the written consent
16 of all interested parties.

17 (3) Subject to subsection (2), compensation for ordinary
18 services of attorneys in a formal estate administration is
19 presumed to be reasonable if based on the compensable value of
20 the estate, which is the inventory value of the probate estate
21 assets and the income earned by the estate during the
22 administration as provided in the following schedule:

23 (a) One thousand five hundred dollars for estates having a
24 value of \$40,000 or less.

25 (b) An additional \$750 for estates having a value of more
26 than \$40,000 and not exceeding \$70,000.

27 (c) An additional \$750 for estates having a value of more
28 than \$70,000 and not exceeding \$100,000.

29 (d) For estates having a value in excess of \$100,000, at
30 the rate of 3 percent on the next \$900,000.

31 (e) At the rate of 2.5 percent for all above \$1 million and
32 not exceeding \$3 million.

33 (f) At the rate of 2 percent for all above \$3 million and
34 not exceeding \$5 million.

35 (g) At the rate of 1.5 percent for all above \$5 million and
36 not exceeding \$10 million.

37 (h) At the rate of 1 percent for all above \$10 million.

38 (4) Subject to subsection (2), in addition to fees for
39 ordinary services, the attorney for the personal representative
40 shall be allowed further reasonable compensation for any



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41 extraordinary service. What is an extraordinary service may vary
42 depending on many factors, including the size and complexity of
43 the estate. Extraordinary services may include, but are not
44 limited to:

45 (a) Involvement in a will contest, will construction, a
46 proceeding for determination of beneficiaries, a contested
47 claim, elective share proceeding, apportionment of estate taxes,
48 or any adversarial proceeding or litigation by or against the
49 estate.

50 (b) Representation of the personal representative in audit
51 or any proceeding for adjustment, determination, or collection
52 of any taxes.

53 (c) Tax advice on postmortem tax planning, including, but
54 not limited to, disclaimer, renunciation of fiduciary
55 commission, alternate valuation date, allocation of
56 administrative expenses between tax returns, the QTIP or reverse
57 QTIP election, allocation of GST exemption, qualification for
58 Internal Revenue Code ss. 6166 and 303 privileges, deduction of
59 last illness expenses, fiscal year planning, distribution
60 planning, asset basis considerations, handling income or
61 deductions in respect of a decedent, valuation discounts,
62 special use and other valuation, handling employee benefit or
63 retirement proceeds, prompt assessment request, or request for
64 release of personal liability for payment of tax.

65 (d) Review of estate tax return and preparation or review
66 of other tax returns required to be filed by the personal
67 representative.

68 (e) Preparation of the estate's federal estate tax return.
69 If this return is prepared by the attorney, a fee of one-half of



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70 1 percent up to a value of \$10 million and one-fourth of 1
71 percent on the value in excess of \$10 million of the gross
72 estate as finally determined for federal estate tax purposes, is
73 presumed to be reasonable compensation for the attorney for this
74 service. These fees shall include services for routine audit of
75 the return, not beyond the examining agent level, if required.

76 (f) Purchase, sale, lease, or encumbrance of real property
77 by the personal representative or involvement in zoning, land
78 use, environmental, or other similar matters.

79 (g) Legal advice regarding carrying on of the decedent's
80 business or conducting other commercial activity by the personal
81 representative.

82 (h) Legal advice regarding claims for damage to the
83 environment or related procedures.

84 (i) Legal advice regarding homestead status of real
85 property or proceedings involving that status and services
86 related to protected homestead.

87 (j) Involvement in fiduciary, employee, or attorney
88 compensation disputes.

89 (k) Proceedings involving ancillary administration of
90 assets not subject to administration in this state.

91 (5) Upon petition of any interested person, the court may
92 increase or decrease the compensation for ordinary services of
93 the attorney or award compensation for extraordinary services if
94 the facts and circumstances of the particular administration
95 warrant. In determining reasonable compensation, the court shall
96 consider all of the following factors, giving weight to each as
97 it determines to be appropriate:

98 (a) The promptness, efficiency, and skill with which the



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99 administration was handled by the attorney.

100 (b) The responsibilities assumed by and the potential
101 liabilities of the attorney.

102 (c) The nature and value of the assets that are affected by
103 the decedent's death.

104 (d) The benefits or detriments resulting to the estate or
105 interested persons from the attorney's services.

106 (e) The complexity or simplicity of the administration and
107 the novelty of issues presented.

108 (f) The attorney's participation in tax planning for the
109 estate and the estate's beneficiaries and tax return
110 preparation, review, or approval.

111 (g) The nature of the probate, nonprobate, and exempt
112 assets, the expenses of administration, the liabilities of the
113 decedent, and the compensation paid to other professionals and
114 fiduciaries.

115 (h) Any delay in payment of the compensation after the
116 services were furnished.

117 (i) Any agreement relating to the attorney's compensation
118 and whether written disclosures were made to the personal
119 representative in a timely manner under the circumstances
120 pursuant to subsection (2).

121 (j) Any other relevant factors.

122 (6) If a separate written agreement regarding compensation
123 exists between the attorney and the decedent, the attorney shall
124 furnish a copy to the personal representative prior to
125 commencement of employment, and, if employed, shall promptly
126 file and serve a copy on all interested persons. ~~Neither~~ A
127 separate agreement or ~~nor~~ a provision in the will suggesting or



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128 directing that the personal representative retain a specific
129 attorney does not ~~will~~ obligate the personal representative to
130 employ the attorney or obligate the attorney to accept the
131 representation, but if the attorney who is a party to the
132 agreement or who drafted the will is employed, the compensation
133 paid shall not exceed the compensation provided in the agreement
134 or in the will.

135 Section 2. Present paragraph (i) of subsection (6) of
136 section 736.1007, Florida Statutes, is redesignated as paragraph
137 (j), a new paragraph (i) is added to that subsection, and
138 subsections (1), (2), (3), and (5) of that section are amended,
139 to read:

140 736.1007 Trustee's attorney fees.—

141 (1) (a) Except as provided in paragraph (d), if the trustee
142 of a revocable trust retains an attorney to render legal
143 services in connection with the initial administration of the
144 trust, the attorney is entitled to reasonable compensation for
145 those legal services, payable from the assets of the trust,
146 subject to s. 736.0802(10), without court order. The trustee and
147 the attorney may agree to compensation that is determined in a
148 manner or amount other than the manner or amount provided in
149 this section. The agreement is not binding on a person who bears
150 the impact of the compensation unless that person is a party to
151 or otherwise consents to be bound by the agreement. The
152 agreement may provide that the trustee is not individually
153 liable for the attorney fees and costs.

154 (b) An attorney representing a trustee in the initial
155 administration of the trust who intends to charge a fee based
156 upon the schedule set forth in subsection (2) shall make the



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157 following disclosures in writing to the trustee:

158 1. There is not a mandatory statutory attorney fee for
159 trust administration.

160 2. The attorney fee is not required to be based on the size
161 of the trust, and the presumed reasonable fee provided in
162 subsection (2) may not be appropriate in all trust
163 administrations.

164 3. The fee is subject to negotiation between the trustee
165 and the attorney.

166 4. The selection of the attorney is made at the discretion
167 of the trustee, who is not required to select the attorney who
168 prepared the trust.

169 5. The trustee shall be entitled to a summary of ordinary
170 and extraordinary services rendered for the fees agreed upon at
171 the conclusion of the representation. The summary shall be
172 provided by counsel and shall consist of the total hours devoted
173 to the representation or a detailed summary of the services
174 performed during the representation.