

1 A bill to be entitled

2 An act relating to attorney compensation; amending s.  
3 733.6171, F.S.; requiring an attorney representing a  
4 personal representative in an estate administration  
5 who intends to charge a certain fee to make specified  
6 written disclosures; requiring the attorney to obtain  
7 a certain signature; prohibiting an attorney who does  
8 not make such disclosures from being paid for legal  
9 services except in certain circumstances; providing  
10 that the complexity of an estate may be considered  
11 when determining what is an extraordinary service;  
12 requiring a court to consider certain agreements and  
13 written disclosures when determining reasonable  
14 compensation of an attorney upon petition of an  
15 interested person; amending s. 736.1007, F.S.;  
16 requiring an attorney representing a trustee in the  
17 initial administration of a trust who intends to  
18 charge a certain fee to make specified written  
19 disclosures; requiring the attorney to obtain a  
20 certain signature; prohibiting an attorney who does  
21 not make such disclosures from being paid for legal  
22 services except in certain circumstances; providing  
23 that the complexity of a trust may be considered when  
24 determining what is an extraordinary service;  
25 requiring a court to consider certain agreements and

26 | written disclosures when determining reasonable  
 27 | compensation of an attorney upon petition of an  
 28 | interested person; providing applicability; providing  
 29 | an effective date.

30 |  
 31 | Be It Enacted by the Legislature of the State of Florida:

32 |  
 33 | Section 1. Section 733.6171, Florida Statutes, is amended  
 34 | to read:

35 | 733.6171 Compensation of attorney for the personal  
 36 | representative.—

37 | (1) Except as provided in paragraph (2) (d), attorneys for  
 38 | personal representatives are ~~shall be~~ entitled to reasonable  
 39 | compensation payable from the estate assets without court order.

40 | (2) (a) The attorney, the personal representative, and  
 41 | persons bearing the impact of the compensation may agree to  
 42 | compensation determined in a different manner than provided in  
 43 | this section. Compensation may also be determined in a different  
 44 | manner than provided in this section if the manner is disclosed  
 45 | to the parties bearing the impact of the compensation and if no  
 46 | objection is made as provided for in the Florida Probate Rules.

47 | (b) An attorney representing a personal representative in  
 48 | an estate administration who intends to charge a fee based upon  
 49 | the schedule set forth in subsection (3) shall make the  
 50 | following disclosures in writing to the personal representative:

51 1. There is not a mandatory statutory attorney fee for  
52 estate administration.

53 2. The attorney fee is not required to be based on the  
54 size of the estate, and the presumed reasonable fee provided in  
55 subsection (3) may not be appropriate in all estate  
56 administrations.

57 3. The fee is subject to negotiation between the personal  
58 representative and the attorney.

59 4. The selection of the attorney is made at the discretion  
60 of the personal representative, who is not required to select  
61 the attorney who prepared the will.

62 (c) The attorney shall obtain the personal  
63 representative's timely signature acknowledging the disclosures.

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

68 (3) Subject to subsection (2), compensation for ordinary  
69 services of attorneys in a formal estate administration is  
70 presumed to be reasonable if based on the compensable value of  
71 the estate, which is the inventory value of the probate estate  
72 assets and the income earned by the estate during the  
73 administration as provided in the following schedule:

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

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

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

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

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

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

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

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

89 (4) Subject to subsection (2), in addition to fees for  
 90 ordinary services, the attorney for the personal representative  
 91 shall be allowed further reasonable compensation for any  
 92 extraordinary service. What is an extraordinary service may vary  
 93 depending on many factors, including the size and complexity of  
 94 the estate. Extraordinary services may include, but are not  
 95 limited to:

96 (a) Involvement in a will contest, will construction, a  
 97 proceeding for determination of beneficiaries, a contested  
 98 claim, elective share proceeding, apportionment of estate taxes,  
 99 or any adversarial proceeding or litigation by or against the  
 100 estate.

101 (b) Representation of the personal representative in audit  
102 or any proceeding for adjustment, determination, or collection  
103 of any taxes.

104 (c) Tax advice on postmortem tax planning, including, but  
105 not limited to, disclaimer, renunciation of fiduciary  
106 commission, alternate valuation date, allocation of  
107 administrative expenses between tax returns, the QTIP or reverse  
108 QTIP election, allocation of GST exemption, qualification for  
109 Internal Revenue Code ss. 6166 and 303 privileges, deduction of  
110 last illness expenses, fiscal year planning, distribution  
111 planning, asset basis considerations, handling income or  
112 deductions in respect of a decedent, valuation discounts,  
113 special use and other valuation, handling employee benefit or  
114 retirement proceeds, prompt assessment request, or request for  
115 release of personal liability for payment of tax.

116 (d) Review of estate tax return and preparation or review  
117 of other tax returns required to be filed by the personal  
118 representative.

119 (e) Preparation of the estate's federal estate tax return.  
120 If this return is prepared by the attorney, a fee of one-half of  
121 1 percent up to a value of \$10 million and one-fourth of 1  
122 percent on the value in excess of \$10 million of the gross  
123 estate as finally determined for federal estate tax purposes, is  
124 presumed to be reasonable compensation for the attorney for this  
125 service. These fees shall include services for routine audit of

126 the return, not beyond the examining agent level, if required.

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

130 (g) Legal advice regarding carrying on of the decedent's  
131 business or conducting other commercial activity by the personal  
132 representative.

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

135 (i) Legal advice regarding homestead status of real  
136 property or proceedings involving that status and services  
137 related to protected homestead.

138 (j) Involvement in fiduciary, employee, or attorney  
139 compensation disputes.

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

142 (5) Upon petition of any interested person, the court may  
143 increase or decrease the compensation for ordinary services of  
144 the attorney or award compensation for extraordinary services if  
145 the facts and circumstances of the particular administration  
146 warrant. In determining reasonable compensation, the court shall  
147 consider all of the following factors, giving weight to each as  
148 it determines to be appropriate:

149 (a) The promptness, efficiency, and skill with which the  
150 administration was handled by the attorney.

151 (b) The responsibilities assumed by and the potential  
152 liabilities of the attorney.

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

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

157 (e) The complexity or simplicity of the administration and  
158 the novelty of issues presented.

159 (f) The attorney's participation in tax planning for the  
160 estate and the estate's beneficiaries and tax return  
161 preparation, review, or approval.

162 (g) The nature of the probate, nonprobate, and exempt  
163 assets, the expenses of administration, the liabilities of the  
164 decedent, and the compensation paid to other professionals and  
165 fiduciaries.

166 (h) Any delay in payment of the compensation after the  
167 services were furnished.

168 (i) Any agreement relating to the attorney's compensation  
169 and whether written disclosures were made to the personal  
170 representative in a timely manner under the circumstances  
171 pursuant to subsection (2).

172 (j) Any other relevant factors.

173 (6) If a separate written agreement regarding compensation  
174 exists between the attorney and the decedent, the attorney shall  
175 furnish a copy to the personal representative prior to

176 commencement of employment, and, if employed, shall promptly  
177 file and serve a copy on all interested persons. ~~Neither~~ A  
178 separate agreement or ~~nor~~ a provision in the will suggesting or  
179 directing that the personal representative retain a specific  
180 attorney does not ~~will~~ obligate the personal representative to  
181 employ the attorney or obligate the attorney to accept the  
182 representation, but if the attorney who is a party to the  
183 agreement or who drafted the will is employed, the compensation  
184 paid shall not exceed the compensation provided in the agreement  
185 or in the will.

186 Section 2. Paragraph (i) of subsection (6) of section  
187 736.1007, Florida Statutes, is redesignated as paragraph (j),  
188 subsections (1), (2), (3), and (5) of that section are amended,  
189 and a new paragraph (i) is added to subsection (6) of that  
190 section, to read:

191 736.1007 Trustee's attorney fees.—

192 (1) (a) Except as provided in paragraph (d), if the trustee  
193 of a revocable trust retains an attorney to render legal  
194 services in connection with the initial administration of the  
195 trust, the attorney is entitled to reasonable compensation for  
196 those legal services, payable from the assets of the trust,  
197 subject to s. 736.0802(10), without court order. The trustee and  
198 the attorney may agree to compensation that is determined in a  
199 manner or amount other than the manner or amount provided in  
200 this section. The agreement is not binding on a person who bears



201 the impact of the compensation unless that person is a party to  
202 or otherwise consents to be bound by the agreement. The  
203 agreement may provide that the trustee is not individually  
204 liable for the attorney fees and costs.

205 (b) An attorney representing a trustee in the initial  
206 administration of the trust who intends to charge a fee based  
207 upon the schedule set forth in subsection (2) shall make the  
208 following disclosures in writing to the trustee:

209 1. There is not a mandatory statutory attorney fee for  
210 trust administration.

211 2. The attorney fee is not required to be based on the  
212 size of the trust, and the presumed reasonable fee provided in  
213 subsection (2) may not be appropriate in all trust  
214 administrations.

215 3. The fee is subject to negotiation between the trustee  
216 and the attorney.

217 4. The selection of the attorney is made at the discretion  
218 of the trustee, who is not required to select the attorney who  
219 prepared the trust.

220 (c) The attorney shall obtain the trustee's timely  
221 signature acknowledging the disclosures.

222 (d) If the attorney does not make the disclosures required  
223 by this section, the attorney may not be paid for legal services  
224 without prior court approval of the fees or the written consent  
225 of the trustee and all qualified beneficiaries.

226 (2) Unless otherwise agreed and subject to subsection (1),  
227 compensation based on the value of the trust assets immediately  
228 following the settlor's death and the income earned by the trust  
229 during initial administration at the rate of 75 percent of the  
230 schedule provided in s. 733.6171(3)(a)-(h) is presumed to be  
231 reasonable total compensation for ordinary services of all  
232 attorneys employed generally to advise a trustee concerning the  
233 trustee's duties in the initial trust administration.

234 (3) Subject to subsection (1), an attorney who is retained  
235 to render only limited and specifically defined legal services  
236 shall be compensated as provided in the retaining agreement. If  
237 the amount or method of determining compensation is not provided  
238 in the agreement, the attorney is entitled to a reasonable fee,  
239 taking into account the factors set forth in subsection (6).

240 (5) Subject to subsection (1), in addition to the  
241 attorney's fees for ordinary services, the attorney for the  
242 trustee shall be allowed further reasonable compensation for any  
243 extraordinary service. What constitutes an extraordinary service  
244 may vary depending on many factors, including the size and  
245 complexity of the trust. Extraordinary services may include, but  
246 are not limited to:

247 (a) Involvement in a trust contest, trust construction, a  
248 proceeding for determination of beneficiaries, a contested  
249 claim, elective share proceedings, apportionment of estate  
250 taxes, or other adversary proceedings or litigation by or

251 against the trust.

252 (b) Representation of the trustee in an audit or any  
253 proceeding for adjustment, determination, or collection of any  
254 taxes.

255 (c) Tax advice on postmortem tax planning, including, but  
256 not limited to, disclaimer, renunciation of fiduciary  
257 commission, alternate valuation date, allocation of  
258 administrative expenses between tax returns, the QTIP or reverse  
259 QTIP election, allocation of GST exemption, qualification for  
260 Internal Revenue Code ss. 303 and 6166 privileges, deduction of  
261 last illness expenses, distribution planning, asset basis  
262 considerations, throwback rules, handling income or deductions  
263 in respect of a decedent, valuation discounts, special use and  
264 other valuation, handling employee benefit or retirement  
265 proceeds, prompt assessment request, or request for release from  
266 personal liability for payment of tax.

267 (d) Review of an estate tax return and preparation or  
268 review of other tax returns required to be filed by the trustee.

269 (e) Preparation of decedent's federal estate tax return.  
270 If this return is prepared by the attorney, a fee of one-half of  
271 1 percent up to a value of \$10 million and one-fourth of 1  
272 percent on the value in excess of \$10 million, of the gross  
273 estate as finally determined for federal estate tax purposes, is  
274 presumed to be reasonable compensation for the attorney for this  
275 service. These fees shall include services for routine audit of

276 | the return, not beyond the examining agent level, if required.

277 |       (f) Purchase, sale, lease, or encumbrance of real property  
278 | by the trustee or involvement in zoning, land use,  
279 | environmental, or other similar matters.

280 |       (g) Legal advice regarding carrying on of decedent's  
281 | business or conducting other commercial activity by the trustee.

282 |       (h) Legal advice regarding claims for damage to the  
283 | environment or related procedures.

284 |       (i) Legal advice regarding homestead status of trust real  
285 | property or proceedings involving the status.

286 |       (j) Involvement in fiduciary, employee, or attorney  
287 | compensation disputes.

288 |       (k) Considerations of special valuation of trust assets,  
289 | including discounts for blockage, minority interests, lack of  
290 | marketability, and environmental liability.

291 |       (6) Upon petition of any interested person in a proceeding  
292 | to review the compensation paid or to be paid to the attorney  
293 | for the trustee, the court may increase or decrease the  
294 | compensation for ordinary services of the attorney for the  
295 | trustee or award compensation for extraordinary services if the  
296 | facts and circumstances of the particular administration  
297 | warrant. In determining reasonable compensation, the court shall  
298 | consider all of the following factors giving such weight to each  
299 | as the court may determine to be appropriate:

300 |       (i) Any agreement relating to the attorney's compensation

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301 and whether written disclosures were made to the trustee in a  
302 timely manner under the circumstances pursuant to paragraph  
303 (1) (b).

304 Section 3. This act applies to initial estate and initial  
305 trust administrations commenced on or after October 1, 2021.

306 Section 4. This act shall take effect October 1, 2021.