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CS/HB 625, Engrossed 1

2021 Legislature

1
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

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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:

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

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

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

74 (3) Subject to subsection (2), compensation for ordinary
75 services of attorneys in a formal estate administration is

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76 | presumed to be reasonable if based on the compensable value of
77 | the estate, which is the inventory value of the probate estate
78 | assets and the income earned by the estate during the
79 | administration as provided in the following schedule:

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

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

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

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

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

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

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

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

95 | (4) Subject to subsection (2), in addition to fees for
96 | ordinary services, the attorney for the personal representative
97 | shall be allowed further reasonable compensation for any
98 | extraordinary service. What is an extraordinary service may vary
99 | depending on many factors, including the size and complexity of
100 | the estate. Extraordinary services may include, but are not

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101 limited to:

102 (a) Involvement in a will contest, will construction, a
 103 proceeding for determination of beneficiaries, a contested
 104 claim, elective share proceeding, apportionment of estate taxes,
 105 or any adversarial proceeding or litigation by or against the
 106 estate.

107 (b) Representation of the personal representative in audit
 108 or any proceeding for adjustment, determination, or collection
 109 of any taxes.

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

122 (d) Review of estate tax return and preparation or review
 123 of other tax returns required to be filed by the personal
 124 representative.

125 (e) Preparation of the estate's federal estate tax return.

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126 If this return is prepared by the attorney, a fee of one-half of
127 1 percent up to a value of \$10 million and one-fourth of 1
128 percent on the value in excess of \$10 million of the gross
129 estate as finally determined for federal estate tax purposes, is
130 presumed to be reasonable compensation for the attorney for this
131 service. These fees shall include services for routine audit of
132 the return, not beyond the examining agent level, if required.

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

136 (g) Legal advice regarding carrying on of the decedent's
137 business or conducting other commercial activity by the personal
138 representative.

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

141 (i) Legal advice regarding homestead status of real
142 property or proceedings involving that status and services
143 related to protected homestead.

144 (j) Involvement in fiduciary, employee, or attorney
145 compensation disputes.

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

148 (5) Upon petition of any interested person, the court may
149 increase or decrease the compensation for ordinary services of
150 the attorney or award compensation for extraordinary services if

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151 the facts and circumstances of the particular administration
 152 warrant. In determining reasonable compensation, the court shall
 153 consider all of the following factors, giving weight to each as
 154 it determines to be appropriate:

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

157 (b) The responsibilities assumed by and the potential
 158 liabilities of the attorney.

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

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

163 (e) The complexity or simplicity of the administration and
 164 the novelty of issues presented.

165 (f) The attorney's participation in tax planning for the
 166 estate and the estate's beneficiaries and tax return
 167 preparation, review, or approval.

168 (g) The nature of the probate, nonprobate, and exempt
 169 assets, the expenses of administration, the liabilities of the
 170 decedent, and the compensation paid to other professionals and
 171 fiduciaries.

172 (h) Any delay in payment of the compensation after the
 173 services were furnished.

174 (i) Any agreement relating to the attorney's compensation
 175 and whether written disclosures were made to the personal

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176 representative in a timely manner under the circumstances
 177 pursuant to subsection (2).

178 (j) Any other relevant factors.

179 (6) If a separate written agreement regarding compensation
 180 exists between the attorney and the decedent, the attorney shall
 181 furnish a copy to the personal representative prior to
 182 commencement of employment, and, if employed, shall promptly
 183 file and serve a copy on all interested persons. ~~Neither~~ A
 184 separate agreement or ~~nor~~ a provision in the will suggesting or
 185 directing that the personal representative retain a specific
 186 attorney does not ~~will~~ obligate the personal representative to
 187 employ the attorney or obligate the attorney to accept the
 188 representation, but if the attorney who is a party to the
 189 agreement or who drafted the will is employed, the compensation
 190 paid shall not exceed the compensation provided in the agreement
 191 or in the will.

192 Section 2. Present paragraph (i) of subsection (6) of
 193 section 736.1007, Florida Statutes, is redesignated as paragraph
 194 (j), a new paragraph (i) is added to that subsection, and
 195 subsections (1), (2), (3), and (5) of that section are amended,
 196 to read:

197 736.1007 Trustee's attorney fees.—

198 (1) (a) Except as provided in paragraph (d), if the trustee
 199 of a revocable trust retains an attorney to render legal
 200 services in connection with the initial administration of the

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201 trust, the attorney is entitled to reasonable compensation for
202 those legal services, payable from the assets of the trust,
203 subject to s. 736.0802(10), without court order. The trustee and
204 the attorney may agree to compensation that is determined in a
205 manner or amount other than the manner or amount provided in
206 this section. The agreement is not binding on a person who bears
207 the impact of the compensation unless that person is a party to
208 or otherwise consents to be bound by the agreement. The
209 agreement may provide that the trustee is not individually
210 liable for the attorney fees and costs.

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

215 1. There is not a mandatory statutory attorney fee for
216 trust administration.

217 2. The attorney fee is not required to be based on the
218 size of the trust, and the presumed reasonable fee provided in
219 subsection (2) may not be appropriate in all trust
220 administrations.

221 3. The fee is subject to negotiation between the trustee
222 and the attorney.

223 4. The selection of the attorney is made at the discretion
224 of the trustee, who is not required to select the attorney who
225 prepared the trust.

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226 5. The trustee shall be entitled to a summary of ordinary
227 and extraordinary services rendered for the fees agreed upon at
228 the conclusion of the representation. The summary shall be
229 provided by counsel and shall consist of the total hours devoted
230 to the representation or a detailed summary of the services
231 performed during the representation.

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

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

238 (2) Unless otherwise agreed and subject to subsection (1),
239 compensation based on the value of the trust assets immediately
240 following the settlor's death and the income earned by the trust
241 during initial administration at the rate of 75 percent of the
242 schedule provided in s. 733.6171(3)(a)-(h) is presumed to be
243 reasonable total compensation for ordinary services of all
244 attorneys employed generally to advise a trustee concerning the
245 trustee's duties in the initial trust administration.

246 (3) Subject to subsection (1), an attorney who is retained
247 to render only limited and specifically defined legal services
248 shall be compensated as provided in the retaining agreement. If
249 the amount or method of determining compensation is not provided
250 in the agreement, the attorney is entitled to a reasonable fee,

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251 taking into account the factors set forth in subsection (6).

252 (5) Subject to subsection (1), in addition to the
 253 attorney's fees for ordinary services, the attorney for the
 254 trustee shall be allowed further reasonable compensation for any
 255 extraordinary service. What constitutes an extraordinary service
 256 may vary depending on many factors, including the size and
 257 complexity of the trust. Extraordinary services may include, but
 258 are not limited to:

259 (a) Involvement in a trust contest, trust construction, a
 260 proceeding for determination of beneficiaries, a contested
 261 claim, elective share proceedings, apportionment of estate
 262 taxes, or other adversary proceedings or litigation by or
 263 against the trust.

264 (b) Representation of the trustee in an audit or any
 265 proceeding for adjustment, determination, or collection of any
 266 taxes.

267 (c) Tax advice on postmortem tax planning, including, but
 268 not limited to, disclaimer, renunciation of fiduciary
 269 commission, alternate valuation date, allocation of
 270 administrative expenses between tax returns, the QTIP or reverse
 271 QTIP election, allocation of GST exemption, qualification for
 272 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
 273 last illness expenses, distribution planning, asset basis
 274 considerations, throwback rules, handling income or deductions
 275 in respect of a decedent, valuation discounts, special use and

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276 other valuation, handling employee benefit or retirement
 277 proceeds, prompt assessment request, or request for release from
 278 personal liability for payment of tax.

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

281 (e) Preparation of decedent's federal estate tax return.
 282 If this return is prepared by the attorney, a fee of one-half of
 283 1 percent up to a value of \$10 million and one-fourth of 1
 284 percent on the value in excess of \$10 million, of the gross
 285 estate as finally determined for federal estate tax purposes, is
 286 presumed to be reasonable compensation for the attorney for this
 287 service. These fees shall include services for routine audit of
 288 the return, not beyond the examining agent level, if required.

289 (f) Purchase, sale, lease, or encumbrance of real property
 290 by the trustee or involvement in zoning, land use,
 291 environmental, or other similar matters.

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

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

296 (i) Legal advice regarding homestead status of trust real
 297 property or proceedings involving the status.

298 (j) Involvement in fiduciary, employee, or attorney
 299 compensation disputes.

300 (k) Considerations of special valuation of trust assets,

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301 including discounts for blockage, minority interests, lack of
302 marketability, and environmental liability.

303 (6) Upon petition of any interested person in a proceeding
304 to review the compensation paid or to be paid to the attorney
305 for the trustee, the court may increase or decrease the
306 compensation for ordinary services of the attorney for the
307 trustee or award compensation for extraordinary services if the
308 facts and circumstances of the particular administration
309 warrant. In determining reasonable compensation, the court shall
310 consider all of the following factors giving such weight to each
311 as the court may determine to be appropriate:

312 (i) Any agreement relating to the attorney's compensation
313 and whether written disclosures were made to the trustee in a
314 timely manner under the circumstances pursuant to paragraph
315 (1) (b).

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

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