

By the Committee on Judiciary; and Senator Bean

590-02877-21

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1 A bill to be entitled
2 An act relating to attorney compensation; amending s.
3 733.6171, F.S.; requiring an attorney who accepts
4 certain engagements to obtain a fee disclosure
5 statement signed by the person responsible for
6 administering an estate; requiring that such
7 disclosure statement contain certain statements;
8 deleting provisions relating to the determination of
9 reasonable compensation for attorneys of personal
10 representatives; deleting provisions relating to
11 petitions to increase or decrease compensation for
12 such attorneys; amending s. 736.1007, F.S.; deleting
13 provisions relating to the determination of reasonable
14 compensation for attorneys of trustees; deleting
15 provisions relating to petitions to increase or
16 decrease compensation for such attorneys; amending ss.
17 733.106 and 736.1005, F.S.; conforming provisions to
18 changes made by the act; providing an effective date.
19

20 Be It Enacted by the Legislature of the State of Florida:
21

22 Section 1. Section 733.6171, Florida Statutes, is amended
23 to read:

24 733.6171 Compensation of attorney for the personal
25 representative.—

26 (1) Attorneys for personal representatives are ~~shall be~~
27 entitled to reasonable compensation payable from the estate
28 assets without court order. An attorney accepting an engagement
29 to represent an estate in probate or other administration must

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30 obtain a fee disclosure statement signed by the person
31 responsible for administering the estate. Such statement must
32 specify all of the following:

33 (a) The attorney fee for representing the estate in probate
34 matters is not set by law and is not required to be based on the
35 size of the estate.

36 (b) The fee is subject to negotiation between the personal
37 representative and the attorney.

38 (c) The selection of the attorney to represent the estate
39 is at the discretion of the personal representative, and the
40 personal representative is not required to select the attorney
41 who drafted the will.

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

49 ~~(3) Compensation for ordinary services of attorneys in~~
50 ~~formal estate administration is presumed to be reasonable if~~
51 ~~based on the compensable value of the estate, which is the~~
52 ~~inventory value of the probate estate assets and the income~~
53 ~~earned by the estate during the administration as provided in~~
54 ~~the following schedule:~~

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

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

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

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

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

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

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

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

70 ~~(4) In addition to fees for ordinary services, the attorney~~
71 ~~for the personal representative shall be allowed further~~
72 ~~reasonable compensation for any extraordinary service. What is~~
73 ~~an extraordinary service may vary depending on many factors,~~
74 ~~including the size of the estate. Extraordinary services may~~
75 ~~include, but are not limited to:~~

76 ~~(a) Involvement in a will contest, will construction, a~~
77 ~~proceeding for determination of beneficiaries, a contested~~
78 ~~claim, elective share proceeding, apportionment of estate taxes,~~
79 ~~or any adversarial proceeding or litigation by or against the~~
80 ~~estate.~~

81 ~~(b) Representation of the personal representative in audit~~
82 ~~or any proceeding for adjustment, determination, or collection~~
83 ~~of any taxes.~~

84 ~~(c) Tax advice on postmortem tax planning, including, but~~
85 ~~not limited to, disclaimer, renunciation of fiduciary~~
86 ~~commission, alternate valuation date, allocation of~~
87 ~~administrative expenses between tax returns, the QTIP or reverse~~

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~~QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.~~

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

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

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

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

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

~~(i) Legal advice regarding homestead status of real property or proceedings involving that status and services~~

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117 ~~related to protected homestead.~~

118 ~~(j) Involvement in fiduciary, employee, or attorney~~
119 ~~compensation disputes.~~

120 ~~(k) Proceedings involving ancillary administration of~~
121 ~~assets not subject to administration in this state.~~

122 ~~(5) Upon petition of any interested person, the court may~~
123 ~~increase or decrease the compensation for ordinary services of~~
124 ~~the attorney or award compensation for extraordinary services if~~
125 ~~the facts and circumstances of the particular administration~~
126 ~~warrant. In determining reasonable compensation, the court shall~~
127 ~~consider all of the following factors, giving weight to each as~~
128 ~~it determines to be appropriate:~~

129 ~~(a) The promptness, efficiency, and skill with which the~~
130 ~~administration was handled by the attorney.~~

131 ~~(b) The responsibilities assumed by and the potential~~
132 ~~liabilities of the attorney.~~

133 ~~(c) The nature and value of the assets that are affected by~~
134 ~~the decedent's death.~~

135 ~~(d) The benefits or detriments resulting to the estate or~~
136 ~~interested persons from the attorney's services.~~

137 ~~(e) The complexity or simplicity of the administration and~~
138 ~~the novelty of issues presented.~~

139 ~~(f) The attorney's participation in tax planning for the~~
140 ~~estate and the estate's beneficiaries and tax return~~
141 ~~preparation, review, or approval.~~

142 ~~(g) The nature of the probate, nonprobate, and exempt~~
143 ~~assets, the expenses of administration, the liabilities of the~~
144 ~~decedent, and the compensation paid to other professionals and~~
145 ~~fiduciaries.~~

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146 ~~(h) Any delay in payment of the compensation after the~~
147 ~~services were furnished.~~

148 ~~(i) Any other relevant factors.~~

149 (2)~~(6)~~ If a separate written agreement regarding
150 compensation exists between the attorney and the decedent, the
151 attorney must ~~shall~~ furnish a copy to the personal
152 representative prior to commencement of employment, and, if
153 employed, must ~~shall~~ promptly file and serve a copy on all
154 interested persons. ~~Neither~~ A separate agreement or ~~nor~~ a
155 provision in the will suggesting or directing that the personal
156 representative retain a specific attorney does not ~~will~~ obligate
157 the personal representative to employ the attorney or obligate
158 the attorney to accept the representation, but if the attorney
159 who is a party to the agreement or who drafted the will is
160 employed, the compensation paid may ~~shall~~ not exceed the
161 compensation provided in the agreement or in the will.

162 Section 2. Section 736.1007, Florida Statutes, is amended
163 to read:

164 736.1007 Trustee's attorney fees.—

165 (1) If the trustee of a revocable trust retains an attorney
166 to render legal services in connection with the initial
167 administration of the trust, the attorney is entitled to
168 reasonable compensation for those legal services, payable from
169 the assets of the trust, subject to s. 736.0802(10), without
170 court order. ~~The trustee and the attorney may agree to~~
171 ~~compensation that is determined in a manner or amount other than~~
172 ~~the manner or amount provided in this section. The agreement is~~
173 ~~not binding on a person who bears the impact of the compensation~~
174 ~~unless that person is a party to or otherwise consents to be~~

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175 ~~bound by the agreement. The agreement may provide that the~~
176 ~~trustee is not individually liable for the attorney fees and~~
177 ~~costs.~~

178 ~~(2) Unless otherwise agreed, compensation based on the~~
179 ~~value of the trust assets immediately following the settlor's~~
180 ~~death and the income earned by the trust during initial~~
181 ~~administration at the rate of 75 percent of the schedule~~
182 ~~provided in s. 733.6171(3) (a) - (h) is presumed to be reasonable~~
183 ~~total compensation for ordinary services of all attorneys~~
184 ~~employed generally to advise a trustee concerning the trustee's~~
185 ~~duties in initial trust administration.~~

186 ~~(3) An attorney who is retained to render only limited and~~
187 ~~specifically defined legal services shall be compensated as~~
188 ~~provided in the retaining agreement. If the amount or method of~~
189 ~~determining compensation is not provided in the agreement, the~~
190 ~~attorney is entitled to a reasonable fee, taking into account~~
191 ~~the factors set forth in subsection (6).~~

192 ~~(4) Ordinary services of the attorney in an initial trust~~
193 ~~administration include legal advice and representation~~
194 ~~concerning the trustee's duties relating to:~~

195 ~~(a) Review of the trust instrument and each amendment for~~
196 ~~legal sufficiency and interpretation.~~

197 ~~(b) Implementation of substitution of the successor~~
198 ~~trustee.~~

199 ~~(c) Persons who must or should be served with required~~
200 ~~notices and the method and timing of such service.~~

201 ~~(d) The obligation of a successor to require a former~~
202 ~~trustee to provide an accounting.~~

203 ~~(e) The trustee's duty to protect, insure, and manage trust~~

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204 ~~assets and the trustee's liability relating to these duties.~~

205 ~~(f) The trustee's duty regarding investments imposed by the~~
206 ~~prudent investor rule.~~

207 ~~(g) The trustee's obligation to inform and account to~~
208 ~~beneficiaries and the method of satisfaction of such~~
209 ~~obligations, the liability of the trust and trustee to the~~
210 ~~settlor's creditors, and the advisability or necessity for~~
211 ~~probate proceedings to bar creditors.~~

212 ~~(h) Contributions due to the personal representative of the~~
213 ~~settlor's estate for payment of expenses of administration and~~
214 ~~obligations of the settlor's estate.~~

215 ~~(i) Identifying tax returns required to be filed by the~~
216 ~~trustee, the trustee's liability for payment of taxes, and the~~
217 ~~due date of returns.~~

218 ~~(j) Filing a nontaxable affidavit, if not filed by a~~
219 ~~personal representative.~~

220 ~~(k) Order of payment of expenses of administration of the~~
221 ~~trust and order and priority of abatement of trust~~
222 ~~distributions.~~

223 ~~(l) Distribution of income or principal to beneficiaries or~~
224 ~~funding of further trusts provided in the governing instrument.~~

225 ~~(m) Preparation of any legal documents required to effect~~
226 ~~distribution.~~

227 ~~(n) Fiduciary duties, avoidance of self-dealing, conflicts~~
228 ~~of interest, duty of impartiality, and obligations to~~
229 ~~beneficiaries.~~

230 ~~(o) If there is a conflict of interest between a trustee~~
231 ~~who is a beneficiary and other beneficiaries of the trust,~~
232 ~~advice to the trustee on limitations of certain authority of the~~

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233 trustee regarding discretionary distributions or exercise of
234 certain powers and alternatives for appointment of an
235 independent trustee and appropriate procedures.

236 ~~(p) Procedures for the trustee's discharge from liability~~
237 ~~for administration of the trust on termination or resignation.~~

238 ~~(5) In addition to the attorney's fees for ordinary~~
239 ~~services, the attorney for the trustee shall be allowed further~~
240 ~~reasonable compensation for any extraordinary service. What~~
241 ~~constitutes an extraordinary service may vary depending on many~~
242 ~~factors, including the size of the trust. Extraordinary services~~
243 ~~may include, but are not limited to:~~

244 ~~(a) Involvement in a trust contest, trust construction, a~~
245 ~~proceeding for determination of beneficiaries, a contested~~
246 ~~claim, elective share proceedings, apportionment of estate~~
247 ~~taxes, or other adversary proceedings or litigation by or~~
248 ~~against the trust.~~

249 ~~(b) Representation of the trustee in an audit or any~~
250 ~~proceeding for adjustment, determination, or collection of any~~
251 ~~taxes.~~

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

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262 ~~proceeds, prompt assessment request, or request for release from~~
263 ~~personal liability for payment of tax.~~

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

266 ~~(e) Preparation of decedent's federal estate tax return. If~~
267 ~~this return is prepared by the attorney, a fee of one-half of 1~~
268 ~~percent up to a value of \$10 million and one-fourth of 1 percent~~
269 ~~on the value in excess of \$10 million, of the gross estate as~~
270 ~~finally determined for federal estate tax purposes, is presumed~~
271 ~~to be reasonable compensation for the attorney for this service.~~
272 ~~These fees shall include services for routine audit of the~~
273 ~~return, not beyond the examining agent level, if required.~~

274 ~~(f) Purchase, sale, lease, or encumbrance of real property~~
275 ~~by the trustee or involvement in zoning, land use,~~
276 ~~environmental, or other similar matters.~~

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

279 ~~(h) Legal advice regarding claims for damage to the~~
280 ~~environment or related procedures.~~

281 ~~(i) Legal advice regarding homestead status of trust real~~
282 ~~property or proceedings involving the status.~~

283 ~~(j) Involvement in fiduciary, employee, or attorney~~
284 ~~compensation disputes.~~

285 ~~(k) Considerations of special valuation of trust assets,~~
286 ~~including discounts for blockage, minority interests, lack of~~
287 ~~marketability, and environmental liability.~~

288 ~~(6) Upon petition of any interested person in a proceeding~~
289 ~~to review the compensation paid or to be paid to the attorney~~
290 ~~for the trustee, the court may increase or decrease the~~

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291 ~~compensation for ordinary services of the attorney for the~~
292 ~~trustee or award compensation for extraordinary services if the~~
293 ~~facts and circumstances of the particular administration~~
294 ~~warrant. In determining reasonable compensation, the court shall~~
295 ~~consider all of the following factors giving such weight to each~~
296 ~~as the court may determine to be appropriate:~~

297 ~~(a) The promptness, efficiency, and skill with which the~~
298 ~~initial administration was handled by the attorney.~~

299 ~~(b) The responsibilities assumed by, and potential~~
300 ~~liabilities of, the attorney.~~

301 ~~(c) The nature and value of the assets that are affected by~~
302 ~~the decedent's death.~~

303 ~~(d) The benefits or detriments resulting to the trust or~~
304 ~~the trust's beneficiaries from the attorney's services.~~

305 ~~(e) The complexity or simplicity of the administration and~~
306 ~~the novelty of issues presented.~~

307 ~~(f) The attorney's participation in tax planning for the~~
308 ~~estate, the trust, and the trust's beneficiaries and tax return~~
309 ~~preparation or review and approval.~~

310 ~~(g) The nature of the trust assets, the expenses of~~
311 ~~administration, and the claims payable by the trust and the~~
312 ~~compensation paid to other professionals and fiduciaries.~~

313 ~~(h) Any delay in payment of the compensation after the~~
314 ~~services were furnished.~~

315 ~~(i) Any other relevant factors.~~

316 ~~(2)(7)~~ If a separate written agreement regarding
317 compensation exists between the attorney and the settlor, the
318 attorney must ~~shall~~ furnish a copy to the trustee prior to
319 commencement of employment and, if employed, must ~~shall~~ promptly

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320 file and serve a copy on all interested persons. A separate
321 agreement or a provision in the trust suggesting or directing
322 the trustee to retain a specific attorney does not obligate the
323 trustee to employ the attorney or obligate the attorney to
324 accept the representation but, if the attorney who is a party to
325 the agreement or who drafted the trust is employed, the
326 compensation paid may ~~shall~~ not exceed the compensation provided
327 in the agreement.

328 ~~(8) As used in this section, the term "initial trust~~
329 ~~administration" means administration of a revocable trust during~~
330 ~~the period that begins with the death of the settlor and ends on~~
331 ~~the final distribution of trust assets outright or to continuing~~
332 ~~trusts created under the trust agreement but, if an estate tax~~
333 ~~return is required, not until after issuance of an estate tax~~
334 ~~closing letter or other evidence of termination of the estate~~
335 ~~tax proceeding. This initial period is not intended to include~~
336 ~~continued regular administration of the trust.~~

337 Section 3. Subsection (4) of section 733.106, Florida
338 Statutes, is amended to read:

339 733.106 Costs and attorney fees.—

340 (4) If costs and attorney fees are to be paid from the
341 estate under this section, ~~s. 733.6171(4)~~, s. 736.1005, or s.
342 736.1006, the court, in its discretion, may direct from what
343 part of the estate they shall be paid.

344 (a) If the court directs an assessment against a person's
345 part of the estate and such part is insufficient to fully pay
346 the assessment, the court may direct payment from the person's
347 part of a trust, if any, if a pour-over will is involved and the
348 matter is interrelated with the trust.

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349 (b) All or any part of the costs and attorney fees to be
350 paid from the estate may be assessed against one or more
351 persons' part of the estate in such proportions as the court
352 finds to be just and proper.

353 (c) In the exercise of its discretion, the court may
354 consider the following factors:

355 1. The relative impact of an assessment on the estimated
356 value of each person's part of the estate.

357 2. The amount of costs and attorney fees to be assessed
358 against a person's part of the estate.

359 3. The extent to which a person whose part of the estate is
360 to be assessed, individually or through counsel, actively
361 participated in the proceeding.

362 4. The potential benefit or detriment to a person's part of
363 the estate expected from the outcome of the proceeding.

364 5. The relative strength or weakness of the merits of the
365 claims, defenses, or objections, if any, asserted by a person
366 whose part of the estate is to be assessed.

367 6. Whether a person whose part of the estate is to be
368 assessed was a prevailing party with respect to one or more
369 claims, defenses, or objections.

370 7. Whether a person whose part of the estate is to be
371 assessed unjustly caused an increase in the amount of costs and
372 attorney fees incurred by the personal representative or another
373 interested person in connection with the proceeding.

374 8. Any other relevant fact, circumstance, or equity.

375 (d) The court may assess a person's part of the estate
376 without finding that the person engaged in bad faith,
377 wrongdoing, or frivolousness.

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378 Section 4. Subsection (2) of section 736.1005, Florida
379 Statutes, is amended to read:

380 736.1005 Attorney fees for services to the trust.—

381 (2) If attorney fees are to be paid from the trust under
382 subsection (1), ~~s. 736.1007(5)(a)~~, or s. 733.106(4)(a), the
383 court, in its discretion, may direct from what part of the trust
384 the fees shall be paid.

385 (a) All or any part of the attorney fees to be paid from
386 the trust may be assessed against one or more persons' part of
387 the trust in such proportions as the court finds to be just and
388 proper.

389 (b) In the exercise of its discretion, the court may
390 consider the following factors:

391 1. The relative impact of an assessment on the estimated
392 value of each person's part of the trust.

393 2. The amount of attorney fees to be assessed against a
394 person's part of the trust.

395 3. The extent to which a person whose part of the trust is
396 to be assessed, individually or through counsel, actively
397 participated in the proceeding.

398 4. The potential benefit or detriment to a person's part of
399 the trust expected from the outcome of the proceeding.

400 5. The relative strength or weakness of the merits of the
401 claims, defenses, or objections, if any, asserted by a person
402 whose part of the trust is to be assessed.

403 6. Whether a person whose part of the trust is to be
404 assessed was a prevailing party with respect to one or more
405 claims, defenses, or objections.

406 7. Whether a person whose part of the trust is to be

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407 assessed unjustly caused an increase in the amount of attorney
408 fees incurred by the trustee or another person in connection
409 with the proceeding.

410 8. Any other relevant fact, circumstance, or equity.

411 (c) The court may assess a person's part of the trust
412 without finding that the person engaged in bad faith,
413 wrongdoing, or frivolousness.

414 Section 5. This act shall take effect July 1, 2021.