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1
2 An act relating to estates and trusts; amending s.
3 733.705, F.S.; providing that the requirement for a
4 claimant to file an independent action is satisfied if
5 specified actions are taken; specifying that
6 claimants, not creditors, are given certain priority
7 of claims; amending s. 736.0505, F.S.; revising the
8 types of trusts deemed to have been contributed by a
9 settlor's spouse and not the settlor; amending s.
10 736.0705, F.S.; providing that a trustee may resign by
11 specified procedure and with notice to certain
12 parties; providing an effective date.
13

14 Be It Enacted by the Legislature of the State of Florida:
15

16 Section 1. Subsection (5) of section 733.705, Florida
17 Statutes, is amended to read:

18 733.705 Payment of and objection to claims.—

19 (5) The claimant is limited to a period of 30 days from the
20 date of service of an objection within which to bring an
21 independent action upon the claim, or a declaratory action to
22 establish the validity and amount of an unmatured claim which is
23 not yet due but which is certain to become due in the future, or
24 a declaratory action to establish the validity of a contingent
25 claim upon which no cause of action has accrued on the date of
26 service of an objection and that may or may not become due in
27 the future, unless an extension of this time is agreed to by the
28 personal representative in writing before it expires.

29 (a) For good cause, the court may extend the time for

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30 filing an action or proceeding after objection is filed. No
31 action or proceeding on the claim may be brought against the
32 personal representative after the time limited above, and the
33 claim is barred without court order.

34 (b) If an action or proceeding by the claimant is pending
35 against the decedent at the time of the decedent's death, the
36 requirement to bring an independent action is satisfied if,
37 within 30 days after the filing of an objection to the claim:

38 1. A motion complying with all applicable rules of
39 procedure is filed, or a similar procedure is initiated, to
40 substitute the proper party; or

41 2. An order substituting the proper party is entered.

42 (c) If the decedent entered into a binding arbitration
43 agreement relating to the claim during his or her lifetime, or
44 if arbitration is required under s. 731.401, the requirement to
45 bring an independent action is satisfied if, within 30 days
46 after the filing of an objection to the claim, a motion to
47 compel arbitration against the proper party is initiated, as
48 provided for in s. 682.03.

49 (d) If arbitration was commenced before the decedent's
50 death, the requirement to bring an independent action is
51 satisfied if, within 30 days after the filing of an objection to
52 the claim, notice is given to the proper party. If the
53 arbitration was commenced by order of the court, the notice must
54 take the form of a timely filed motion, complying with all
55 applicable rules of procedure, to substitute the proper party.

56 (e) If an objection is filed to the claim of any claimant
57 ~~creditor~~ and the claimant ~~creditor~~ brings an action to establish
58 the claim, a judgment establishing the claim shall give it no

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59 priority over claims of the same class to which it belongs.

60 Section 2. Subsection (3) of section 736.0505, Florida
61 Statutes, is amended to read:

62 736.0505 Creditors' claims against settlor.—

63 (3) Subject to the provisions of s. 726.105, for purposes
64 of this section, the assets in:

65 (a) 1. A trust described in s. 2523(e) of the Internal
66 Revenue Code of 1986, as amended; ~~or~~

67 2. A trust for which the election described in s. 2523(f)
68 of the Internal Revenue Code of 1986, as amended, has been made;
69 or

70 3. An irrevocable trust not otherwise described in
71 subparagraph 1. or subparagraph 2. in which:

72 a. The settlor's spouse is a beneficiary as described in s.
73 736.0103(19) (a) for the lifetime of the settlor's spouse;

74 b. At no time during the lifetime of the settlor's spouse
75 is the settlor a beneficiary as described in s. 736.0103(19) (a);
76 and

77 c. Transfers to the trust by the settlor are completed
78 gifts under s. 2511 of the Internal Revenue Code of 1986, as
79 amended; and

80 (b) Another trust, to the extent that the assets in the
81 other trust are attributable to a trust described in paragraph
82 (a),

83
84 shall, after the death of the settlor's spouse, be deemed to
85 have been contributed by the settlor's spouse and not by the
86 settlor.

87 Section 3. Subsection (1) of section 736.0705, Florida

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88 Statutes, is amended to read:

89 736.0705 Resignation of trustee.—

90 (1) A trustee may resign in accordance with the procedure
91 set forth in the trust instrument and upon notice to the
92 cotrustees or, if none, to the successor trustee who has
93 accepted the appointment, or, if none, to the person or persons
94 who have the authority to appoint a successor trustee.

95 Notwithstanding any provision of the terms of the trust, a
96 trustee may also resign:

97 (a) Upon at least 30 days' notice to the qualified
98 beneficiaries, the settlor, if living, and all cotrustees; or

99 (b) With the approval of the court.

100 Section 4. This act shall take effect July 1, 2022.