

Committee Substitute for House Bill No. 1659

An act relating to trusts and trust powers; creating s. 737.2035, F.S.; providing for costs and attorney's fees in trust proceedings; providing applicability; requiring attorneys to give notice to trustees in specified circumstances; allowing courts to adjust attorney's fees when notice is late amending s. 737.306, F.S.; revising standards governing when a successor trustee is not under a duty to institute an action against a prior trustee or the prior trustee's estate; providing an effective date.

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

Section 1. Section 737.2035, Florida Statutes, is created to read:

737.2035 Costs and attorney's fees in trust proceedings.—

(1) In all trust proceedings, costs may be awarded as in chancery actions.

(2) Any attorney who has rendered services to a trust may apply to the court for an order awarding attorney's fees, and, after notice and service upon the trustee and all beneficiaries entitled to an accounting under s. 737.303, the court shall enter its order on the fee application.

(3) When costs and attorney's fees are to be paid out of the trust, the court may, in its discretion, direct from what part of the trust they shall be paid.

(4) The provisions of this section shall apply only to services of an attorney rendered on or after July 1, 1999.

(5) Except when a trustee's interest may be adverse in a particular matter, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's entitlement to fees pursuant to this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the trustee, if the actual notice date is later than a date of reasonable notice. In exercising this discretion, the court may exclude compensation for services rendered after the reasonable notice date but prior to the date of actual notice.

Section 2. Subsection (3) of section 737.306, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

737.306 Personal liability of trustee.—

(3) A successor trustee succeeding a trustee who was also the grantor of the trust is not personally liable for any action taken or omitted to be taken by any such prior trustee; nor does any such successor trustee have a duty to institute any action against any such prior trustee, or file any claim against any such prior trustee's estate, for any of the prior trustee's acts or omissions as trustee under any of the following circumstances: This subsec-

~~tion applies only with respect to a trust that is revocable during the time that the grantor serves as trustee.~~

(a) The successor trustee succeeds a trustee who was also the grantor of a trust that was revocable during the time that the grantor served as trustee;

(b) As to any beneficiary who has waived any accounting required by s. 737.303, but only as to the periods included in such waiver;

(c) As to any beneficiary who has released the successor trustee from such duty to institute any action or file any claim;

(d) As to any person who is not a beneficiary within the meaning of s. 737.303(4)(b); or

(e) As to any beneficiary described in s. 737.303(4)(b):

1. If a super majority of the reasonably ascertainable current income or principal beneficiaries described in s. 737.303(4)(b)1. and a super majority of the reasonably ascertainable remainder beneficiaries described in s. 737.303(4)(b)2. have released the successor trustee;

2. If the beneficiary has not delivered a written request to the successor trustee to institute an action or file a claim against the prior trustee within 6 months after the date of the successor trustee's acceptance of the trust, if the successor trustee has notified the beneficiary in writing of its acceptance in accordance with s. 737.303(1) and such writing advises the beneficiary that, unless the beneficiary delivers such written request within 6 months after the date of acceptance, his or her right to proceed against the successor trustee will be barred pursuant to this section; or

3. For any action or claim that the beneficiary is barred from bringing against the prior trustee.

(5) For the purposes of this section, a super majority of beneficiaries means at least two-thirds in interest of the beneficiaries if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means at least two-thirds in number of the beneficiaries. A release or waiver under this section may be exercised by a legal representative or natural guardian of the beneficiary without the filing of any proceeding or approval of any court. Nothing in subsection (3) affects any liability of the prior trustee or the right of the successor trustee or any beneficiary to pursue an action or claim against the prior trustee.

Section 3. This act shall take effect July 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.