

## CHAPTER 2013-172

### Committee Substitute for Committee Substitute for Senate Bill No. 492

An act relating to estates; amending s. 198.13, F.S.; providing for retroactive application; deleting a provision that provides that certain information relating to a state death tax credit or a generation-skipping transfer credit is not applicable to estates of decedents dying after a specific date; amending s. 717.101, F.S.; providing a definition; amending s. 717.112, F.S.; providing an exception to property held by agents and fiduciaries; creating s. 717.1125, F.S.; providing that property held by fiduciaries under trust instruments is presumed unclaimed under certain circumstances; amending s. 731.110, F.S.; specifying that a certain subsection does not require a caveator to be served with formal notice of its own petition for administration; amending s. 732.703, F.S.; revising language regarding instruments governed by the laws of a different state; creating s. 732.806, F.S.; providing provisions relating to gifts to lawyers and other disqualified persons; amending s. 732.901, F.S.; requiring the custodian of a will to supply the testator's date of death or the last four digits of the testator's social security number upon deposit; providing that an original will submitted with a pleading is considered to be deposited with the clerk; requiring the clerk to retain and preserve the original will in its original form for a certain period of time; amending s. 736.0103, F.S.; providing definitions; amending s. 736.0202, F.S.; providing for in rem jurisdiction and personal jurisdiction over a trustee, beneficiary, or other person; deleting a provision referring to other methods of obtaining jurisdiction; creating s. 736.02025, F.S.; providing provisions for methods of service of process in actions involving trusts and trust beneficiaries; repealing s. 736.0205, F.S., relating to trust proceedings and the dismissal of matters relating to foreign trusts; repealing s. 736.0807(4), F.S., relating to delegation of powers by a trustee; amending s. 736.0813, F.S.; clarifying the duties of a trustee to provide a trust accounting; amending ss. 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Retroactive to January 1, 2013, subsection (4) of section 198.13, Florida Statutes, is amended to read:

198.13 Tax return to be made in certain cases; certificate of nonliability.

(4) Notwithstanding any other provisions of this section and applicable to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state death tax credit or a generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code of 1986, as amended:

(a) The personal representative of the estate is not required to file a return under subsection (1) in connection with the estate.

(b) The person who would otherwise be required to file a return reporting a generation-skipping transfer under subsection (3) is not required to file such a return in connection with the estate.

~~The provisions of this subsection do not apply to estates of decedents dying after December 31, 2012.~~

Section 2. Present subsections (22) and (23) of section 717.101, Florida Statutes, are redesignated as subsections (23) and (24), respectively, and a new subsection (22) is added to that section, to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(22) “Trust instrument” means a trust instrument as defined in s. 736.0103.

Section 3. Subsection (1) of section 717.112, Florida Statutes, is amended to read:

717.112 Property held by agents and fiduciaries.—

(1) Except as provided in ss. 717.1125 and 733.816, all intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed unclaimed unless the owner has within 5 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

Section 4. Section 717.1125, Florida Statutes, is created to read:

717.1125 Property held by fiduciaries under trust instruments.—All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person under a trust instrument is presumed unclaimed unless the owner has, within 2 years after it has become payable or distributable, increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

Section 5. Subsection (3) of section 731.110, Florida Statutes, is amended to read:

731.110 Caveat; proceedings.—

(3) If a caveat has been filed by an interested person other than a creditor, the court may not admit a will of the decedent to probate or appoint

a personal representative until formal notice of the petition for administration has been served on the caveator or the caveator's designated agent and the caveator has had the opportunity to participate in proceedings on the petition, as provided by the Florida Probate Rules. This subsection does not require a caveator to be served with formal notice of its own petition for administration.

Section 6. Subsection (4) of section 732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(4) Subsection (2) does not apply:

(a) To the extent that controlling federal law provides otherwise;

(b) If the governing instrument is signed by the decedent, or on behalf of the decedent, after the order of dissolution or order declaring the marriage invalid and such governing instrument expressly provides that benefits will be payable to the decedent's former spouse;

(c) To the extent a will or trust governs the disposition of the assets and s. 732.507(2) or s. ~~736.1105~~ 736.1005 applies;

(d) If the order of dissolution or order declaring the marriage invalid requires that the decedent acquire or maintain the asset for the benefit of a former spouse or children of the marriage, payable upon the death of the decedent either outright or in trust, only if other assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist upon the death of the decedent;

(e) If, under the terms of the order of dissolution or order declaring the marriage invalid, the decedent could not have unilaterally terminated or modified the ownership of the asset, or its disposition upon the death of the decedent;

(f) If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;

(g) If the governing instrument directing the disposition of the asset at death is governed by the laws of a state other than this state;

(h) To an asset held in two or more names as to which the death of one coowner vests ownership of the asset in the surviving coowner or coowners;

(i) If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death; or

(j) To state-administered retirement plans under chapter 121.

Section 7. Section 732.806, Florida Statutes, is created to read:

732.806 Gifts to lawyers and other disqualified persons.—

(1) Any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer is void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift.

(2) This section is not applicable to a provision in a written instrument appointing a lawyer, or a person related to the lawyer, as a fiduciary.

(3) A provision in a written instrument purporting to waive the application of this section is unenforceable.

(4) If property distributed in kind, or a security interest in that property, is acquired by a purchaser or lender for value from a person who has received a gift in violation of this section, the purchaser or lender takes title free of any claims arising under this section and incurs no personal liability by reason of this section, whether or not the gift is void under this section.

(5) In all actions brought under this section, the court must award taxable costs as in chancery actions, including attorney fees. When awarding taxable costs and attorney fees under this section, the court may direct payment from a party's interest in the estate or trust, or enter a judgment that may be satisfied from other property of the party, or both. Attorney fees and costs may not be awarded against a party who, in good faith, initiates an action under this section to declare a gift void.

(6) If a part of a written instrument is invalid by reason of this section, the invalid part is severable and may not affect any other part of the written instrument which can be given effect, including a term that makes an alternate or substitute gift. In the case of a power of appointment, this section does not affect the power to appoint in favor of persons other than the lawyer or a person related to the lawyer.

(7) For purposes of this section:

(a) A lawyer is deemed to have prepared, or supervised the execution of, a written instrument if the preparation, or supervision of the execution, of the written instrument was performed by an employee or lawyer employed by the same firm as the lawyer.

(b) A person is "related" to an individual if, at the time the lawyer prepared or supervised the execution of the written instrument or solicited the gift, the person is:

1. A spouse of the individual;

2. A lineal ascendant or descendant of the individual;

3. A sibling of the individual;

4. A relative of the individual or of the individual’s spouse with whom the lawyer maintains a close, familial relationship;

5. A spouse of a person described in subparagraph 2., subparagraph 3., or subparagraph 4.; or

6. A person who cohabitates with the individual.

(c) The term “written instrument” includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary.

(d) The term “gift” includes an inter vivos gift, a testamentary transfer of real or personal property or any interest therein, and the power to make such a transfer regardless of whether the gift is outright or in trust; regardless of when the transfer is to take effect; and regardless of whether the power is held in a fiduciary or nonfiduciary capacity.

(8) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law or in equity.

Section 8. Section 732.901, Florida Statutes, is amended to read:

732.901 Production of wills.—

(1) The custodian of a will must deposit the will with the clerk of the court having venue of the estate of the decedent within 10 days after receiving information that the testator is dead. The custodian must supply the testator’s date of death or the last four digits of the testator’s social security number to the clerk upon deposit.

(2) Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will as ~~provided in subsection (1).~~ All costs, damages, and a reasonable attorney’s fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.

(3) An original will submitted to the clerk with a petition or other pleading is deemed to have been deposited with the clerk.

(4) Upon receipt, the clerk shall retain and preserve the original will in its original form for at least 20 years. If the probate of a will is initiated, the original will may be maintained by the clerk with the other pleadings during the pendency of the proceedings, but the will must at all times be retained in its original form for the remainder of the 20-year period whether or not the will is admitted to probate or the proceedings are terminated. Transforming and storing a will on film, microfilm, magnetic, electronic, optical, or other

substitute media or recording a will onto an electronic record-keeping system, whether or not in accordance with the standards adopted by the Supreme Court of Florida, or permanently recording a will does not eliminate the requirement to preserve the original will.

(5) For purposes of this section, the term “will” includes a separate writing as described in s. 732.515.

Section 9. Present subsections (6) through (11) of section 736.0103, Florida Statutes, are redesignated as subsections (7) through (12), respectively, present subsections (12) through (21) of that section are redesignated as subsections (14) through (23), respectively, and new subsections (6) and (13) are added to that section, to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(6) “Distributee” means a beneficiary who is currently entitled to receive a distribution.

(13) “Permissible distributee” means a beneficiary who is currently eligible to receive a distribution.

Section 10. Section 736.0202, Florida Statutes, is amended to read:

736.0202 Jurisdiction over trustee and beneficiary.—

(1) IN REM JURISDICTION.—Any beneficiary By accepting the trusteeship of a trust having its principal place of administration in this state is subject or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state to the extent of the beneficiary’s interest in regarding any matter involving the trust.

(2) PERSONAL JURISDICTION.—

(a) Any trustee, trust beneficiary, or other person, whether or not a citizen or resident of this state, who personally or through an agent does any of the following acts related to a trust, submits to the jurisdiction of the courts of this state involving that trust: With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the distribution.

1. Accepts trusteeship of a trust having its principal place of administration in this state at the time of acceptance.

2. Moves the principal place of administration of a trust to this state.

3. Serves as trustee of a trust created by a settlor who was a resident of this state at the time of creation of the trust or serves as trustee of a trust having its principal place of administration in this state.

4. Accepts or exercises a delegation of powers or duties from the trustee of a trust having its principal place of administration in this state.

5. Commits a breach of trust in this state, or commits a breach of trust with respect to a trust having its principal place of administration in this state at the time of the breach.

6. Accepts compensation from a trust having its principal place of administration in this state.

7. Performs any act or service for a trust having its principal place of administration in this state.

8. Accepts a distribution from a trust having its principal place of administration in this state with respect to any matter involving the distribution.

(b) A court of this state may exercise personal jurisdiction over a trustee, trust beneficiary, or other person, whether found within or outside the state, to the maximum extent permitted by the State Constitution or the Federal Constitution.

~~(3) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.~~

Section 11. Section 736.02025, Florida Statutes, is created to read:

736.02025 Service of process.—

(1) Except as otherwise provided in this section, service of process upon any person may be made as provided in chapter 48.

(2) Where only in rem or quasi in rem relief is sought against a person in a matter involving a trust, service of process on that person may be made by sending a copy of the summons and complaint by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt. Service under this subsection shall be complete upon signing of a receipt by the addressee or by any person authorized to receive service of a summons on behalf of the addressee as provided in chapter 48. Proof of service shall be by verified statement of the person serving the summons, to which must be attached the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or other authorized person.

(3) Under any of the following circumstances, service of original process pursuant to subsection (2) may be made by first-class mail:

(a) If registered or certified mail service to the addressee is unavailable and if delivery by commercial delivery service is also unavailable.

(b) If delivery is attempted and is refused by the addressee.

(c) If delivery by mail requiring a signed receipt is unclaimed after notice to the addressee by the delivering entity.

(4) If service of process is obtained under subsection (3), proof of service shall be made by verified statement of the person serving the summons. The verified statement must state the basis for service by first-class mail, the date of mailing, and the address to which the mail was sent.

Section 12. Section 736.0205, Florida Statutes, is repealed.

Section 13. Subsection (4) of section 736.0807, Florida Statutes, is repealed.

Section 14. Paragraph (d) of subsection (1) of section 736.0813, Florida Statutes, is amended to read:

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee’s duty to inform and account includes, but is not limited to, the following:

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

Section 15. Subsection (2) of section 607.0802, Florida Statutes, is amended to read:

607.0802 Qualifications of directors.—

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners’ association, or mobile home owners’ association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a qualified beneficiary as defined in s. 736.0103(14) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the

association and eligible to serve as a director of the condominium association, cooperative association, homeowners’ association, or mobile home owners’ association, provided that said beneficiary occupies the unit, parcel, or mobile home.

Section 16. Subsections (2) and (11) of section 731.201, Florida Statutes, are amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(2) “Beneficiary” means heir at law in an intestate estate and devisee in a testate estate. The term “beneficiary” does not apply to an heir at law or a devisee after that person’s interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103(14) shall be regarded as a beneficiary of the estate.

(11) “Devisee” means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103(14) shall be regarded as a devisee.

Section 17. Subsection (1) of section 733.212, Florida Statutes, is amended to read:

733.212 Notice of administration; filing of objections.—

(1) The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative:

- (a) The decedent’s surviving spouse;
- (b) Beneficiaries;
- (c) The trustee of any trust described in s. 733.707(3) and each qualified beneficiary of the trust as defined in s. 736.0103(14), if each trustee is also a personal representative of the estate; and
- (d) Persons who may be entitled to exempt property

in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees under a known prior will or heirs or others who claim or may claim an interest in the estate.

Section 18. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f1). The trustee of a trust as defined in s. 731.201 may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. "Majority of the qualified beneficiaries" means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, and at least a majority in interest of the beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, if the interests

of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and at least a majority in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. "Qualified investment instrument" means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 19. Paragraph (a) of subsection (2) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(2) For the purposes of this section, the term:

(a) "Eligible beneficiaries" means:

1. At the time the determination is made, if there are one or more beneficiaries as described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

2. If there is no beneficiary as described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

Section 20. Paragraph (d) of subsection (9) of section 738.104, Florida Statutes, is amended to read:

738.104 Trustee's power to adjust.—

(9)

(d) For purposes of subsection (8) and this subsection, the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

b. If there is no beneficiary described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

2. “Super majority of the eligible beneficiaries” means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(16)(c) ~~736.0103(14)(e)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 21. This act shall take effect October 1, 2013.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.