

## CHAPTER 2014-127

### Committee Substitute for Committee Substitute for House Bill No. 757

An act relating to estates; amending s. 732.806, F.S.; specifying that certain restrictions on gifts to lawyers and persons related to such lawyers apply only to written instruments executed on or after a specified date; providing applicability; amending s. 733.107, F.S.; providing circumstances under which a burden of proof shifts in cases involving undue influence; providing applicability; amending s. 733.808, F.S.; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; providing for retroactive applicability; amending s. 736.0207, F.S.; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust; providing applicability; amending s. 736.05053, F.S.; requiring a specific directive for certain assets and death benefits to be used to pay estate expenses; providing for retroactive applicability; amending s. 736.1106, F.S.; providing for the vesting of outright devises in certain trust documents; providing applicability; providing an effective date.

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

Section 1. Subsection (9) is added to section 732.806, Florida Statutes, to read:

732.806 Gifts to lawyers and other disqualified persons.—

(9) This section applies only to written instruments executed on or after October 1, 2013.

Section 2. The changes made by this act to s. 732.806, Florida Statutes, are intended to clarify existing law and are remedial in nature.

Section 3. Section 733.107, Florida Statutes, is amended to read:

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) In any transaction or event to which the presumption of undue influence applies, the presumption of ~~undue influence~~ implements public

policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.

Section 4. The changes made by this act to s. 733.107, Florida Statutes, are intended to clarify existing law, are remedial in nature, and apply retroactively to all proceedings pending on or before the effective date of this act and to all cases commenced on or after the effective date of this act.

Section 5. Subsection (4) of section 733.808, Florida Statutes, is amended to read:

733.808 Death benefits; disposition of proceeds.—

(4) Unless the trust agreement, declaration of trust, or will expressly refers to this subsection and directs that it does not apply, death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

Section 6. The changes made by this act to s. 733.808, Florida Statutes, are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the decedent's death.

Section 7. Section 736.0207, Florida Statutes, is amended to read:

736.0207 Trust contests.—

(1) In an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of establishing the grounds for invalidity.

(2) An action to contest the validity of all or part of a revocable trust, or the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death. If all of a revocable trust has been revoked, an action to contest the revocation may not be commenced until after the settlor's death. This section does not prohibit such action by the guardian of the property of an incapacitated settlor.

Section 8. The changes made by this act to s. 736.0207, Florida Statutes, apply to all cases commenced on or after the effective date of this act.

Section 9. Subsection (1) of section 736.05053, Florida Statutes, is amended to read:

736.05053 Trustee's duty to pay expenses and obligations of settlor's estate.—

(1) A trustee of a trust described in s. 733.707(3) shall pay to the personal representative of a settlor's estate any amounts that the personal representative certifies in writing to the trustee are required to pay the expenses of the administration and obligations of the settlor's estate. Payments made by a trustee, unless otherwise provided in the trust instrument, must be charged as expenses of the trust without a contribution from anyone. The interests of all beneficiaries of such a trust are subject to the provisions of this subsection; however, the payments must be made from assets, property, or the proceeds of the assets or property that are included in the settlor's gross estate for federal estate tax purposes and may not be made from, other than assets proscribed in s. 733.707(3) or death benefits described in s. 733.808(4) unless the trust instrument expressly refers to s. 733.808(4) and directs that it does not apply, that are included in the settlor's gross estate for federal estate tax purposes.

Section 10. The changes made by this act to s. 736.05053, Florida Statutes, are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the settlor's death.

Section 11. Subsection (5) of section 736.1106, Florida Statutes, is renumbered as subsection (6) and amended, and a new subsection (5) is added to that section, to read:

736.1106 Antilapse; survivorship with respect to future interests under terms of inter vivos and testamentary trusts; substitute takers.—

(5) Unless a contrary intent appears in the trust instrument, subsections (2)-(4) do not apply to an outright devise that vests upon the death of the settlor unless the beneficiary is a grandparent, or a lineal descendant of a grandparent, of the settlor or testator and the beneficiary:

(a) Is dead at the time of the execution of the revocable trust or will;

(b) Fails to survive the settlor or testator; or

(c) Is required by the inter vivos trust or by operation of law to be treated as having predeceased the settlor or testator.

A devise in a revocable trust or a testamentary trust that is to take effect at the death of the settlor or testator does not vest until the death of the settlor or testator.

(6)(5) Subsections (1)-(4) apply to all trusts other than trusts that were irrevocable before the effective date of this code. Sections 732.603, 732.604, and 737.6035, as they exist on June 30, 2007, continue to apply to other trusts executed on or after June 12, 2003. Subsection (5) applies to those trusts that become irrevocable after June 30, 2014.

Section 12. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.