

## CHAPTER 2021-145

### Committee Substitute for House Bill No. 625

An act relating to attorney compensation; amending s. 733.6171, F.S.; requiring an attorney representing a personal representative in an estate administration who intends to charge a certain fee to make specified written disclosures; requiring the attorney to obtain a certain signature; prohibiting an attorney who does not make such disclosures from being paid for legal services except in certain circumstances; providing that the complexity of an estate may be considered when determining what is an extraordinary service; requiring a court to consider certain agreements and written disclosures when determining reasonable compensation of an attorney upon petition of an interested person; amending s. 736.1007, F.S.; requiring an attorney representing a trustee in the initial administration of a trust who intends to charge a certain fee to make specified written disclosures; requiring the attorney to obtain a certain signature; prohibiting an attorney who does not make such disclosures from being paid for legal services except in certain circumstances; providing that the complexity of a trust may be considered when determining what is an extraordinary service; requiring a court to consider certain agreements and written disclosures when determining reasonable compensation of an attorney upon petition of an interested person; providing applicability; providing an effective date.

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

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

733.6171 Compensation of attorney for the personal representative.—

(1) Except as provided in paragraph (2)(d), attorneys for personal representatives ~~are shall~~ be entitled to reasonable compensation payable from the estate assets without court order.

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

(b) An attorney representing a personal representative in an estate administration who intends to charge a fee based upon the schedule set forth in subsection (3) shall make the following disclosures in writing to the personal representative:

1. There is not a mandatory statutory attorney fee for estate administration.

2. The attorney fee is not required to be based on the size of the estate, and the presumed reasonable fee provided in subsection (3) may not be appropriate in all estate administrations.

3. The fee is subject to negotiation between the personal representative and the attorney.

4. The selection of the attorney is made at the discretion of the personal representative, who is not required to select the attorney who prepared the will.

5. The personal representative shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

(c) The attorney shall obtain the personal representative's timely signature acknowledging the disclosures.

(d) If the attorney does not make the disclosures required by this section, the attorney may not be paid for legal services without prior court approval of the fees or the written consent of all interested parties.

(3) Subject to subsection (2), compensation for ordinary services of attorneys in a formal estate administration is presumed to be reasonable if based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule:

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

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

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

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

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

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

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

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

(4) Subject to subsection (2), in addition to fees for ordinary services, the attorney for the personal representative shall be allowed further reasonable compensation for any extraordinary service. What is an extraordinary service may vary depending on many factors, including the size and complexity of the estate. Extraordinary services may include, but are not limited to:

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

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

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse 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 related to protected homestead.

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

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

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

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

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

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

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

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

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

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

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

(i) Any agreement relating to the attorney's compensation and whether written disclosures were made to the personal representative in a timely manner under the circumstances pursuant to subsection (2).

(j) Any other relevant factors.

(6) If a separate written agreement regarding compensation exists between the attorney and the decedent, the attorney shall furnish a copy to the personal representative prior to commencement of employment, and, if employed, shall promptly file and serve a copy on all interested persons. ~~Neither A separate agreement or nor~~ a provision in the will suggesting or directing that the personal representative retain a specific attorney does not will obligate the personal representative to employ the attorney or obligate

the attorney to accept the representation, but if the attorney who is a party to the agreement or who drafted the will is employed, the compensation paid shall not exceed the compensation provided in the agreement or in the will.

Section 2. Present paragraph (i) of subsection (6) of section 736.1007, Florida Statutes, is redesignated as paragraph (j), a new paragraph (i) is added to that subsection, and subsections (1), (2), (3), and (5) of that section are amended, to read:

736.1007 Trustee's attorney fees.—

(1)(a) Except as provided in paragraph (d), if the trustee of a revocable trust retains an attorney to render legal services in connection with the initial administration of the trust, the attorney is entitled to reasonable compensation for those legal services, payable from the assets of the trust, subject to s. 736.0802(10), without court order. The trustee and the attorney may agree to compensation that is determined in a manner or amount other than the manner or amount provided in this section. The agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be bound by the agreement. The agreement may provide that the trustee is not individually liable for the attorney fees and costs.

(b) An attorney representing a trustee in the initial administration of the trust who intends to charge a fee based upon the schedule set forth in subsection (2) shall make the following disclosures in writing to the trustee:

1. There is not a mandatory statutory attorney fee for trust administration.

2. The attorney fee is not required to be based on the size of the trust, and the presumed reasonable fee provided in subsection (2) may not be appropriate in all trust administrations.

3. The fee is subject to negotiation between the trustee and the attorney.

4. The selection of the attorney is made at the discretion of the trustee, who is not required to select the attorney who prepared the trust.

5. The trustee shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

(c) The attorney shall obtain the trustee's timely signature acknowledging the disclosures.

(d) If the attorney does not make the disclosures required by this section, the attorney may not be paid for legal services without prior court approval

of the fees or the written consent of the trustee and all qualified beneficiaries.

(2) Unless otherwise agreed and subject to subsection (1), compensation based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable total compensation for ordinary services of all attorneys employed generally to advise a trustee concerning the trustee's duties in the initial trust administration.

(3) Subject to subsection (1), an attorney who is retained to render only limited and specifically defined legal services shall be compensated as provided in the retaining agreement. If the amount or method of determining compensation is not provided in the agreement, the attorney is entitled to a reasonable fee, taking into account the factors set forth in subsection (6).

(5) Subject to subsection (1), in addition to the attorney's fees for ordinary services, the attorney for the trustee shall be allowed further reasonable compensation for any extraordinary service. What constitutes an extraordinary service may vary depending on many factors, including the size and complexity of the trust. Extraordinary services may include, but are not limited to:

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

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

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, 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 from personal liability for payment of tax.

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

(e) Preparation of decedent'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 trustee or involvement in zoning, land use, environmental, or other similar matters.

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

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

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

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

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

(6) Upon petition of any interested person in a proceeding to review the compensation paid or to be paid to the attorney for the trustee, the court may increase or decrease the compensation for ordinary services of the attorney for the trustee or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors giving such weight to each as the court may determine to be appropriate:

(i) Any agreement relating to the attorney’s compensation and whether written disclosures were made to the trustee in a timely manner under the circumstances pursuant to paragraph (1)(b).

Section 3. This act applies to initial estate and initial trust administrations commenced on or after October 1, 2021.

Section 4. This act shall take effect October 1, 2021.

Approved by the Governor June 21, 2021.

Filed in Office Secretary of State June 21, 2021.