

CHAPTER 2022-101

Committee Substitute for Senate Bill No. 1502

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

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

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

733.705 Payment of and objection to claims.—

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

(a) For good cause, the court may extend the time for filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order.

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

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

2. An order substituting the proper party is entered.

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

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

(e) If an objection is filed to the claim of any claimant creditor and the claimant creditor brings an action to establish the claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

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

736.0505 Creditors' claims against settlor.—

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

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

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

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

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

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

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

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

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

Section 3. Subsection (1) of section 736.0705, Florida Statutes, is amended to read:

736.0705 Resignation of trustee.—

(1) A trustee may resign in accordance with the procedure set forth in the trust instrument and upon notice to the cotrustees or, if none, to the successor trustee who has accepted the appointment, or, if none, to the

person or persons who have the authority to appoint a successor trustee.
Notwithstanding any provision of the terms of the trust, a trustee may also resign:

- (a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- (b) With the approval of the court.

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

Approved by the Governor May 10, 2022.

Filed in Office Secretary of State May 10, 2022.