

By the Committees on Rules; Banking and Insurance; and  
Judiciary; and Senator Hukill

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1                   A bill to be entitled  
2           An act relating to estates; creating s. 731.1055,  
3           F.S.; providing that the validity and the effect of a  
4           specified disposition of real property be determined  
5           by Florida law; amending s. 731.106, F.S.; conforming  
6           provisions to changes made by the act; amending s.  
7           736.0802, F.S.; defining the term "pleading";  
8           authorizing a trustee to pay attorney fees and costs  
9           from the assets of the trust without specified  
10          approval or court authorization in certain  
11          circumstances; requiring the trustee to serve a  
12          written notice of intent upon each qualified  
13          beneficiary of the trust before the payment is made;  
14          requiring the notice of intent to contain specified  
15          information and to be served in a specified manner;  
16          providing that specified qualified beneficiaries may  
17          be entitled to an order compelling the refund of a  
18          specified payment to the trust; requiring the court to  
19          award specified attorney fees and costs in certain  
20          circumstances; authorizing the court to prohibit a  
21          trustee from using trust assets to make a specified  
22          payment; authorizing the court to enter an order  
23          compelling the return of specified attorney fees and  
24          costs to the trust with interest at the statutory  
25          rate; requiring the court to deny a specified motion  
26          unless the court finds a reasonable basis to conclude  
27          that there has been a breach of the trust; authorizing  
28          a court to deny the motion if it finds good cause to  
29          do so; authorizing the movant to show that a  
30          reasonable basis exists, and a trustee to rebut the  
31          showing, through specified means; authorizing the

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32 court to impose such remedies or sanctions as it deems  
33 appropriate; providing that a trustee is authorized to  
34 use trust assets in a specified manner if a claim or  
35 defense of breach of trust is withdrawn, dismissed, or  
36 judicially resolved in a trial court without a  
37 determination that the trustee has committed a breach  
38 of trust; providing that specified proceedings,  
39 remedies, and rights are not limited; amending ss.  
40 736.0816 and 736.1007, F.S.; conforming provisions to  
41 changes made by the act; providing an effective date.  
42

43 Be It Enacted by the Legislature of the State of Florida:  
44

45 Section 1. Section 731.1055, Florida Statutes, is created  
46 to read:

47 731.1055 Disposition of real property.—The validity and  
48 effect of a disposition, whether intestate or testate, of real  
49 property in this state shall be determined by Florida law.

50 Section 2. Subsection (2) of section 731.106, Florida  
51 Statutes, is amended to read:

52 731.106 Assets of nondomiciliaries.—

53 (2) When a nonresident decedent, whether or not a citizen  
54 of the United States, provides by will that the testamentary  
55 disposition of tangible or intangible personal property having a  
56 situs within this state, ~~or of real property in this state,~~  
57 shall be construed and regulated by the laws of this state, the  
58 validity and effect of the dispositions shall be determined by  
59 Florida law. The court may, and in the case of a decedent who  
60 was at the time of death a resident of a foreign country the

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61 court shall, direct the personal representative appointed in  
62 this state to make distribution directly to those designated by  
63 the decedent's will as beneficiaries of the tangible or  
64 intangible property or to the persons entitled to receive the  
65 decedent's personal estate under the laws of the decedent's  
66 domicile.

67 Section 3. Subsection (10) of section 736.0802, Florida  
68 Statutes, is amended to read:

69 736.0802 Duty of loyalty.—

70 (10) Unless otherwise provided in this subsection, payment  
71 of costs or attorney ~~attorney's~~ fees incurred in any proceeding  
72 ~~from the assets of the trust~~ may be made by a ~~the~~ trustee from  
73 assets of the trust without the approval of any person and  
74 without court authorization, ~~unless the court orders otherwise~~  
75 as provided in ss. 736.0816(20) and 736.1007(1) paragraph (b).

76 (a) As used in this subsection, the term "pleading" means a  
77 pleading as defined in Rule 1.100 of the Florida Rules of Civil  
78 Procedure.

79 (b) If a trustee incurs attorney fees or costs in  
80 connection with a claim or defense of breach of trust which is  
81 made in a filed pleading, the trustee may pay such attorney fees  
82 or costs from trust assets without the approval of any person  
83 and without any court authorization. However, the trustee must  
84 serve a written notice of intent upon each qualified beneficiary  
85 of the trust whose share of the trust may be affected by the  
86 payment before such payment is made. The notice of intent does  
87 not need to be served upon a qualified beneficiary whose  
88 identity or location is unknown to, and not reasonably  
89 ascertainable by, the trustee.

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90       (c) The notice of intent must identify the judicial  
91 proceeding in which the claim or defense of breach of trust has  
92 been made in a filed pleading and must inform the person served  
93 of his or her right under paragraph (e) to apply to the court  
94 for an order prohibiting the trustee from using trust assets to  
95 pay attorney fees or costs as provided in paragraph (b) or  
96 compelling the return of such attorney fees and costs to the  
97 trust. The notice of intent must be served by any commercial  
98 delivery service or form of mail requiring a signed receipt; the  
99 manner provided in the Florida Rules of Civil Procedure for  
100 service of process; or, as to any party over whom the court has  
101 already acquired jurisdiction in that judicial proceeding, in  
102 the manner provided for service of pleadings and other documents  
103 by the Florida Rules of Civil Procedure.

104       (d) If a trustee has used trust assets to pay attorney fees  
105 or costs described in paragraph (b) before service of a notice  
106 of intent, any qualified beneficiary who is not barred under s.  
107 736.1008 and whose share of the trust may have been affected by  
108 such payment is entitled, upon the filing of a motion to compel  
109 the return of such payment to the trust, to an order compelling  
110 the return of such payment, with interest at the statutory rate.  
111 The court shall award attorney fees and costs incurred in  
112 connection with the motion to compel as provided in s. 736.1004.

113       (e) Upon the motion of any qualified beneficiary who is not  
114 barred under s. 736.1008 and whose share of the trust may be  
115 affected by the use of trust assets to pay attorney fees or  
116 costs as provided in paragraph (b), the court may prohibit the  
117 trustee from using trust assets to make such payment and, if  
118 such payment has been made from trust assets after service of a

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119 notice of intent, the court may enter an order compelling the  
120 return of the attorney fees and costs to the trust, with  
121 interest at the statutory rate. In connection with any hearing  
122 on a motion brought under this paragraph:

123 1. The court shall deny the motion unless it finds a  
124 reasonable basis to conclude that there has been a breach of  
125 trust. If the court finds there is a reasonable basis to  
126 conclude there has been a breach of trust, the court may still  
127 deny the motion if it finds good cause to do so.

128 2. The movant may show that such reasonable basis exists,  
129 and the trustee may rebut any such showing by presenting  
130 affidavits, answers to interrogatories, admissions, depositions,  
131 and any evidence otherwise admissible under the Florida Evidence  
132 Code.

133 (f) If a trustee fails to comply with an order of the court  
134 prohibiting the use of trust assets to pay attorney fees or  
135 costs described in paragraph (b) or fails to comply with an  
136 order compelling that such payment be refunded to the trust, the  
137 court may impose such remedies or sanctions as the court deems  
138 appropriate, including, without limitation, striking the  
139 defenses or pleadings filed by the trustee.

140 (g) Notwithstanding the entry of an order prohibiting the  
141 use of trust assets to pay attorney fees and costs as provided  
142 in paragraph (b), or compelling the return of such attorney fees  
143 or costs, if a claim or defense of breach of trust is withdrawn,  
144 dismissed, or judicially resolved in the trial court without a  
145 determination that the trustee has committed a breach of trust,  
146 the trustee is authorized to use trust assets to pay attorney  
147 fees and costs as provided in paragraph (b) and may do so

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148 without service of a notice of intent or order of the court. The  
149 attorney fees and costs may include fees and costs that were  
150 refunded to the trust pursuant to an order of the court.

151 (h) This subsection does not limit proceedings under s.  
152 736.0206 or remedies for breach of trust under s. 736.1001, or  
153 the right of any interested person to challenge or object to the  
154 payment of compensation or costs from the trust.

155 ~~(a) If a claim or defense based upon a breach of trust is~~  
156 ~~made against a trustee in a proceeding, the trustee shall~~  
157 ~~provide written notice to each qualified beneficiary of the~~  
158 ~~trust whose share of the trust may be affected by the payment of~~  
159 ~~attorney's fees and costs of the intention to pay costs or~~  
160 ~~attorney's fees incurred in the proceeding from the trust prior~~  
161 ~~to making payment. The written notice shall be delivered by~~  
162 ~~sending a copy by any commercial delivery service requiring a~~  
163 ~~signed receipt, by any form of mail requiring a signed receipt,~~  
164 ~~or as provided in the Florida Rules of Civil Procedure for~~  
165 ~~service of process. The written notice shall inform each~~  
166 ~~qualified beneficiary of the trust whose share of the trust may~~  
167 ~~be affected by the payment of attorney's fees and costs of the~~  
168 ~~right to apply to the court for an order prohibiting the trustee~~  
169 ~~from paying attorney's fees or costs from trust assets. If a~~  
170 ~~trustee is served with a motion for an order prohibiting the~~  
171 ~~trustee from paying attorney's fees or costs in the proceeding~~  
172 ~~and the trustee pays attorney's fees or costs before an order is~~  
173 ~~entered on the motion, the trustee and the trustee's attorneys~~  
174 ~~who have been paid attorney's fees or costs from trust assets to~~  
175 ~~defend against the claim or defense are subject to the remedies~~  
176 ~~in paragraphs (b) and (c).~~

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177       ~~(b) If a claim or defense based upon breach of trust is~~  
178 ~~made against a trustee in a proceeding, a party must obtain a~~  
179 ~~court order to prohibit the trustee from paying costs or~~  
180 ~~attorney's fees from trust assets. To obtain an order~~  
181 ~~prohibiting payment of costs or attorney's fees from trust~~  
182 ~~assets, a party must make a reasonable showing by evidence in~~  
183 ~~the record or by proffering evidence that provides a reasonable~~  
184 ~~basis for a court to conclude that there has been a breach of~~  
185 ~~trust. The trustee may proffer evidence to rebut the evidence~~  
186 ~~submitted by a party. The court in its discretion may defer~~  
187 ~~ruling on the motion, pending discovery to be taken by the~~  
188 ~~parties. If the court finds that there is a reasonable basis to~~  
189 ~~conclude that there has been a breach of trust, unless the court~~  
190 ~~finds good cause, the court shall enter an order prohibiting the~~  
191 ~~payment of further attorney's fees and costs from the assets of~~  
192 ~~the trust and shall order attorney's fees or costs previously~~  
193 ~~paid from assets of the trust to be refunded. An order entered~~  
194 ~~under this paragraph shall not limit a trustee's right to seek~~  
195 ~~an order permitting the payment of some or all of the attorney's~~  
196 ~~fees or costs incurred in the proceeding from trust assets,~~  
197 ~~including any fees required to be refunded, after the claim or~~  
198 ~~defense is finally determined by the court. If a claim or~~  
199 ~~defense based upon a breach of trust is withdrawn, dismissed, or~~  
200 ~~resolved without a determination by the court that the trustee~~  
201 ~~committed a breach of trust after the entry of an order~~  
202 ~~prohibiting payment of attorney's fees and costs pursuant to~~  
203 ~~this paragraph, the trustee may pay costs or attorney's fees~~  
204 ~~incurred in the proceeding from the assets of the trust without~~  
205 ~~further court authorization.~~

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206 ~~(c) If the court orders a refund under paragraph (b), the~~  
207 ~~court may enter such sanctions as are appropriate if a refund is~~  
208 ~~not made as directed by the court, including, but not limited~~  
209 ~~to, striking defenses or pleadings filed by the trustee. Nothing~~  
210 ~~in this subsection limits other remedies and sanctions the court~~  
211 ~~may employ for the failure to refund timely.~~

212 ~~(d) Nothing in this subsection limits the power of the~~  
213 ~~court to review fees and costs or the right of any interested~~  
214 ~~persons to challenge fees and costs after payment, after an~~  
215 ~~accounting, or after conclusion of the litigation.~~

216 ~~(e) Notice under paragraph (a) is not required if the~~  
217 ~~action or defense is later withdrawn or dismissed by the party~~  
218 ~~that is alleging a breach of trust or resolved without a~~  
219 ~~determination by the court that the trustee has committed a~~  
220 ~~breach of trust.~~

221 Section 4. Subsection (20) of section 736.0816, Florida  
222 Statutes, is amended to read:

223 736.0816 Specific powers of trustee.—Except as limited or  
224 restricted by this code, a trustee may:

225 (20) Employ persons, including, but not limited to,  
226 attorneys, accountants, investment advisers, or agents, even if  
227 they are the trustee, an affiliate of the trustee, or otherwise  
228 associated with the trustee, to advise or assist the trustee in  
229 the exercise of any of the trustee's powers and pay reasonable  
230 compensation and costs incurred in connection with such  
231 employment from the assets of the trust, subject to s.  
232 736.0802(10) with respect to attorney fees and costs, and act  
233 without independent investigation on the recommendations of such  
234 persons.



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235 Section 5. Subsection (1) of section 736.1007, Florida  
236 Statutes, is amended to read:

237 736.1007 Trustee's attorney's fees.—

238 (1) If the trustee of a revocable trust retains an attorney  
239 to render legal services in connection with the initial  
240 administration of the trust, the attorney is entitled to  
241 reasonable compensation for those legal services, payable from  
242 the assets of the trust, subject to s. 736.0802(10), without  
243 court order. The trustee and the attorney may agree to  
244 compensation that is determined in a manner or amount other than  
245 the manner or amount provided in this section. The agreement is  
246 not binding on a person who bears the impact of the compensation  
247 unless that person is a party to or otherwise consents to be  
248 bound by the agreement. The agreement may provide that the  
249 trustee is not individually liable for the attorney ~~attorney's~~  
250 fees and costs.

251 Section 6. This act shall take effect July 1, 2016.