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LEGISLATIVE ACTION

Senate

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House

Senator Bean moved the following:

Senate Amendment

Delete lines 62 - 219
and insert:

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



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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



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41 extraordinary service. What is an extraordinary service may vary
42 depending on many factors, including the size and complexity of
43 the estate. Extraordinary services may include, but are not
44 limited to:

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

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

53 (c) Tax advice on postmortem tax planning, including, but
54 not limited to, disclaimer, renunciation of fiduciary
55 commission, alternate valuation date, allocation of
56 administrative expenses between tax returns, the QTIP or reverse
57 QTIP election, allocation of GST exemption, qualification for
58 Internal Revenue Code ss. 6166 and 303 privileges, deduction of
59 last illness expenses, fiscal year planning, distribution
60 planning, asset basis considerations, handling income or
61 deductions in respect of a decedent, valuation discounts,
62 special use and other valuation, handling employee benefit or
63 retirement proceeds, prompt assessment request, or request for
64 release of personal liability for payment of tax.

65 (d) Review of estate tax return and preparation or review
66 of other tax returns required to be filed by the personal
67 representative.

68 (e) Preparation of the estate's federal estate tax return.
69 If this return is prepared by the attorney, a fee of one-half of



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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



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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



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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



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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.