

PROBATE CORNER

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ARTICLE: WHEN CAN TRUST ASSETS BE USED TO PAY ESTATE EXPENSES AND OBLIGATIONS?

The purpose of the article is to clarify when the expenses of the administration and obligations of the decedent's estate can be paid from the trust and the procedure for paying those expenses/obligations.

RELEVANT STATUTES:

- Sec. 733.607(2), Fla. Stat. provides: “If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal representative certifies in writing to be required to satisfy the insufficiency.”
- Sec.733.805(4), Fla. Stat. provides: “In determining the contribution required under s.733.607(2), subsections (1)-(3) of this section and s.736.05053(2) shall be applied as if the beneficiaries of the estate and the beneficiaries of a trust described in s. 733.707(3), other than the estate or trust itself, were taking under a common instrument.”
- Sec.736.05053(4), Fla. Stat. provides: “The trustee shall pay the expenses of trust administration, including compensation of trustees and attorneys of the trustees, before and in preference to the expenses of the administration and obligations of the settlor's estate.”
- Sec.733.805, Fla. Stat. (estate/abatement)
- Sec.736.05053, Fla. Stat. (trust/abatement)

DISCUSSION:

Under §733.805(4), the will and the trust are to be construed together as one plan to determine what are residuary and preresiduary devises. This statute protects preresiduary devises under both the will and the trust from being abated where there are other trust assets available to pay the expenses and obligations of the decedent's estate.

Consider the following examples: Dad provides a \$500,000 specific devise to his two children by his first marriage in his will. The second wife subsequently convinces dad to transfer his brokerage and bank accounts to his revocable trust. Pursuant to the trust, the second wife receives a specific bequest of \$500,000 and the residue is divided among three charities. At the time of death, the trust was valued at \$2,000,000 and the estate was valued at only \$10,000. The PR can certify the insufficiency to the trustee under §733.607(2) to pay the \$500,000 specific devises and the balance of the estate administration expenses from the residue of the trust.

Same example as above, except that the trust provides for \$2,000,000 in specific bequests. The PR can certify the insufficiency to the trustee under §733.607(2) to pay the estate administration expenses and a *ratable share* of the specific devises under the will.