

PROBATE CORNER

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Article: Proper Venue (Jurisdiction) for Proceedings Against a Foreign Trust

Sec.736.0205, Fla. Stat. reads:

736.0205 Trust proceedings; dismissal of matters relating to foreign trusts.--Over the objection of a party, the court shall not entertain proceedings under s. 736.0201 for a trust registered, or having its principal place of administration, in another state unless all interested parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state where the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

This statute is not jurisdictional, but rather has the purpose of having trust litigation proceed in the most appropriate forum, where there is a possibility of litigating in more than one forum. The nature and purpose of this statute was explained by the court in In re Estate of McMillian, 603 So. 2d 685 (Fla. 1st DCA 1992), as follows:

This statute is not a jurisdictional bar. It is more in the nature of a venue statute, and speaks in terms of whether a Florida court will "entertain" trust proceedings. The statute further does not seem to require the judge to dismiss a case, even after the statutory provision is invoked, as evidenced by the final sentence of the statute which provides that the judge may enter orders of continuance, or other appropriate orders. The comments of the drafters of the Uniform Probate Code, accompanying section 7-203, which is materially similar to our section 737.203, indicate:

It is assumed that under this section a court would refuse to entertain litigation involving the foreign registered trust unless for jurisdictional or other reasons, such as the nature and location of the property or unusual interests of the parties, it is manifest that substantial injustice would result if the parties were referred to the court of registration [T]he issue is essentially only one of forum non conveniens in having litigation proceed in the most appropriate forum. This is the function of this section.

In Covenant Trust Company v. The Guardianship of Lillian Ihrman, 45 So. 3d 499 (Fla. 4th DCA 2010), Covenant was the trustee of the Ihrman Trust which was being administered in the State of Illinois. The Trust reads in part "[t]his instrument and the disposition under it shall be construed and regulated and their validity and effect shall be determined by the laws of the State of Illinois." A guardianship over Ms. Ihrman was pending in Broward County. The guardian filed a Petition to Order Payment of Monthly Cost of Care/Petition to Remove Covenant as

Trustee. In response, Covenant filed a motion to dismiss the petition based, in part, on §736.0205, F.S., and argued that the action should be brought in Illinois. Judge Speiser denied the motion to dismiss. Based on Covenant's affidavit, the appellate court found that the Trust's principal place of administration was Illinois and reversed and remanded, in part, with directions to hold an evidentiary hearing to determine if all interested parties could be bound by litigation in Illinois. The court reasoned:

It is not clear from the record if "all interested parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration." Thus, if the trial court determines it has in personam jurisdiction, it will next need to determine if the interested parties could be bound by litigation in Illinois. See *Meyer v. Meyer*, 931 So. 2d 268, 269-70 (Fla. 5th DCA 2006) (trust administered in New York where trustee resided; no parties had any connections with Florida; trial court should have applied section 737.203 (predecessor to section 736.0205); thus, it "reverse[d] the order denying the motion to dismiss and remand[ed] for the purpose of allowing the trial court to determine whether all interested parties could be bound by litigation in New York").

In *Straub v. Nationsbank*, 732 So. 2d 48 (Fla. 4th DCA 1999), the testamentary trust was created pursuant to the will of a resident of Missouri whose estate was probated in Missouri and was being administered by the co-trustees in Missouri. The beneficiary of the trust was a resident of Florida and brought suit in Florida alleging improper conduct by the trustees. The trial court dismissed the case for lack of jurisdiction based on the representation of the trustees that Missouri would have jurisdiction over the action. The appellate court affirmed on the basis that dismissal should have been ordered under Fla. Stat. § 737.203 [predecessor to §736.0205] which restricted Florida courts from entertaining trust proceedings relating to a foreign trust.