PROBATE CORNER

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ARTICLE: Jurisdiction Over Fiduciaries And Beneficiaries In Trusts And Estates

**TRUSTS**

§ 736.0202. Jurisdiction over trustee and beneficiary

(1) In rem jurisdiction. --Any beneficiary of a trust having its principal place of administration in this state is subject to the jurisdiction of the courts of this state to the extent of the beneficiary's interest in the trust.

(2) Personal jurisdiction.

(a) Any trustee, trust beneficiary, or other person, whether or not a citizen or resident of this state, who personally or through an agent does any of the following acts related to a trust, submits to the jurisdiction of the courts of this state involving that trust:

1. Accepts trusteeship of a trust having its principal place of administration in this state at the time of acceptance.

2. Moves the principal place of administration of a trust to this state.

3. Serves as trustee of a trust created by a settlor who was a resident of this state at the time of creation of the trust or serves as trustee of a trust having its principal place of administration in this state.

4. Accepts or exercises a delegation of powers or duties from the trustee of a trust having its principal place of administration in this state.

5. Commits a breach of trust in this state, or commits a breach of trust with respect to a trust having its principal place of administration in this state at the time of the breach.

6. Accepts compensation from a trust having its principal place of administration in this state.

7. Performs any act or service for a trust having its principal place of administration in this state.

8. Accepts a distribution from a trust having its principal place of administration in this state with respect to any matter involving the distribution.

(b) A court of this state may exercise personal jurisdiction over a trustee, trust beneficiary, or other person, whether found within or outside the state, to the maximum extent permitted by the State Constitution or the Federal Constitution.

S. 2, ch. 2006-217, eff. July 1, 2007; s. 10, ch. 2013-172, eff. Oct. 1, 2013.

Effective Date: Although this statute went into effect on October 1, 2013, §736.1303(1)(b) reads: “This code [Ch. 736] applies to all judicial proceedings concerning trusts commenced on or after such date [July 1, 2007].”

**ESTATES**

Personal Representative: In personam jurisdiction over the personal representative is acquired by the filing of the petition for administration and is for all purposes related to the administration, including surcharge. *See, Payette v. Clark*, 559 So.2d 630 (Fla. 2d DCA 1990). Once personal jurisdiction is gained over the personal representative, that jurisdiction is persistent and pervasive. For example, in *Levey v. Adams*, 609 So.2d 163 (Fla. 4th DCA 1992), the court held that a nonresident personal representative had submitted himself to personal jurisdiction in the Florida courts for an alleged breach of contract with his lawyers by serving as personal representative of a Florida estate and retaining and agreeing to pay attorneys for their representation. Additionally, in *Laushway v. Onofrio*, 670 So.2d 1135 (Fla. 5th DCA 1996), the court found the former personal representative guilty of undue influence and rejected a challenge to its jurisdiction to order to account for property given to him by the decedent before the decedent’s death. The court held that “the trial court had the authority to continue jurisdiction over Mr. Laushway and any property in his possession to which the estate has a claim, including inter vivos gifts which the court considered procured by undue influence.”

In Rem Jurisdiction - Probate proceedings are in rem proceedings. See, §731.105, F.S. The court, therefore, has jurisdiction over the res (the assets of the decedent's estate) without the necessity of original process. *See, Klem v. Espejo-Norton*, 983 So. 2d 1235 (Fla. 3rd DCA 2008). However, Constitutional due process requires that notice of the proceedings be given to interested persons to bind their interests in the estate. In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead." See, §731.301(2), F.S.