

PERSONAL REPRESENTATIVE'S AND ATTORNEY'S FEES IN PROBATE

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Florida statutes concerning fees payable to personal representatives (executors) and attorneys for the personal representative were revised in 1993 and again in June 1995. The net effect of these changes was a substantial re-wording of section 733.617, concerning personal representative's fees, and the addition of a new section 733.6171 concerning fees of the attorney for the personal representative.

Personal Representative's Fees

Under section 733.617, a personal representative is now entitled to a statutory commission based on the value of the assets in the probate estate. The commission schedule is as follows:

3.0% of the first \$1 million, plus
2.5% of the next \$4 million, plus
2.0% of the next \$10 million, plus
1.5% of the amount above \$10 million.

The statutory fee may be increased or decreased by the court upon the request of any interested person after the court has considered such factors as the complexity of the administration and the promptness, efficiency, and skill with which the personal representative handled the administration.

If two personal representatives are serving and the value of the estate is \$100,000 or more, each is entitled to a full fee. If three or more personal representatives are serving and the value of the estate is \$100,000 or more, the compensation for two personal representatives must be apportioned among the multiple personal representatives. If the estate is valued at less than \$100,000, then one full commission is apportioned among all of the personal representatives. These new fees apply to estates of persons who died after October 1, 1993.

Fees of Attorneys for the Personal Representative

Under section 733.6171, attorneys are entitled to reasonable for services rendered to an estate. The new law indicates that attorney compensation computed under a schedule set forth in the statute is presumed to be reasonable. That schedule provides for fees in formal administration based on the inventory value of the estate assets and the income earned by the estate during administration, as follows:

\$1,500 for estates with a value less than or equal to \$40,000;
\$2,250 for estates with a value between \$40,000 and \$70,000;
\$3,000 for estates with a value between \$70,000 and \$100,000;

Estates over \$100,000, \$3,000 plus:
3.0% of the next \$900,000, plus
2.5% of the next \$2 million, plus

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2.0% of the next \$2 million, plus
1.5% of the next \$5 million, plus
1.0% of the amount over \$10 million.

The scheduled fee applies to ordinary services; fees for extraordinary services, such as litigation, sale of real property, and tax advice are additional. If an estate tax return is prepared by the attorney an additional fee, based on the gross estate for federal estate tax purposes, equal to 1/2 of 1% up to a value of \$10 million, and 1/4 of 1% on the value in excess of \$10 million, is also presumed to be reasonable.

It is important to note that the estate and the beneficiaries are **not required** to pay an attorney's fee computed in the manner described above; such a fee is merely presumed to be reasonable. Under some circumstances a fee determined under the statute could be unreasonable. The new attorney's fee statute became effective on July 1, 1995.

Our firm's practice is to fully discuss the matter of attorney's fees with all beneficiaries bearing the burden of the fee as early in an estate administration as practical, and agree in writing with the beneficiaries on a fee which is fair to all concerned.

This publication is designed to provide accurate and authoritative information in regard to the subject matters covered. It is published with the understanding that in this publication the author is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. (From a Declaration of Principles jointly adopted by a committee of the American Bar Association and a committee of Publishers and Associations.)