

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

1
2 An act relating to effect of dissolution or annulment
3 of marriage on certain designations; creating s.
4 732.703, F.S.; providing definitions; providing that a
5 designation made by or on behalf of a decedent
6 providing for the payment or transfer at death of an
7 interest in an asset to or for the benefit of the
8 decedent's former spouse shall become void if the
9 decedent's marriage was judicially dissolved or
10 declared invalid before the decedent's death, if the
11 designation was made prior to the dissolution or
12 order; providing for disposition of assets; providing
13 for treatment of certain retirement plans; specifying
14 assets subject to provisions; providing exceptions;
15 providing that payors are not liable for payments or
16 transfers to beneficiaries contrary to this provision
17 in certain circumstances; specifying the form of an
18 affidavit that may be used to relieve a payor of
19 liability for a transfer if the death certificate is
20 silent as to the decedent's marital status at the time
21 of death; providing that the payor is not liable for
22 making any payment on account of, or transferring any
23 interest in, certain types of assets to a beneficiary;
24 providing that certain provisions apply
25 notwithstanding the payor's knowledge that the person
26 to whom the asset is transferred is different from the
27 person who would own the interest due to the
28 dissolution of the decedent's marriage or declaration

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

29 of the marriage's validity before the decedent's
 30 death; providing that the provisions do not affect
 31 specified interests and rights; providing
 32 applicability; providing an effective date.

33
 34 Be It Enacted by the Legislature of the State of Florida:

35
 36 Section 1. Section 732.703, Florida Statutes, is created
 37 to read:

38 732.703 Effect of divorce, dissolution, or invalidity of
 39 marriage on disposition of certain assets at death.-

40 (1) As used in this section, unless the context requires
 41 otherwise, the term:

42 (a) "Asset," when not modified by other words or phrases,
 43 means an asset described in subsection (3), except as provided
 44 in paragraph (4) (j).

45 (b) "Beneficiary" means any person designated in a
 46 governing instrument to receive an interest in an asset upon the
 47 death of the decedent.

48 (c) "Death certificate" means a certified copy of a death
 49 certificate issued by an official or agency for the place where
 50 the decedent's death occurred.

51 (d) "Employee benefit plan" means any funded or unfunded
 52 plan, program, or fund established by an employer to provide an
 53 employee's beneficiaries with benefits that may be payable on
 54 the employee's death.

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

55 (e) "Governing instrument" means any writing or contract
56 governing the disposition of all or any part of an asset upon
57 the death of the decedent.

58 (f) "Payor" means any person obligated to make payment of
59 the decedent's interest in an asset upon the death of the
60 decedent, and any other person who is in control or possession
61 of an asset.

62 (g) "Primary beneficiary" means a beneficiary designated
63 under the governing instrument to receive an interest in an
64 asset upon the death of the decedent who is not a secondary
65 beneficiary. A person who receives an interest in the asset upon
66 the death of the decedent due to the death of another
67 beneficiary prior to the decedent's death is also a primary
68 beneficiary.

69 (h) "Secondary beneficiary" means a beneficiary designated
70 under the governing instrument who will receive an interest in
71 an asset if the designation of the primary beneficiary is
72 revoked or otherwise cannot be given effect.

73 (2) A designation made by or on behalf of the decedent
74 providing for the payment or transfer at death of an interest in
75 an asset to or for the benefit of the decedent's former spouse
76 is void as of the time the decedent's marriage was judicially
77 dissolved or declared invalid by court order prior to the
78 decedent's death, if the designation was made prior to the
79 dissolution or court order. The decedent's interest in the asset
80 shall pass as if the decedent's former spouse predeceased the
81 decedent. An individual retirement account described in s. 408
82 or s. 408A of the Internal Revenue Code of 1986, or an employee

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

83 benefit plan, may not be treated as a trust for purposes of this
 84 section.

85 (3) Subsection (2) applies to the following assets in
 86 which a resident of this state has an interest at the time of
 87 the resident's death:

88 (a) A life insurance policy, qualified annuity, or other
 89 similar tax-deferred contract held within an employee benefit
 90 plan.

91 (b) An employee benefit plan.

92 (c) An individual retirement account described in s. 408
 93 or s. 408A of the Internal Revenue Code of 1986, including an
 94 individual retirement annuity described in s. 408(b) of the
 95 Internal Revenue Code of 1986.

96 (d) A payable-on-death account.

97 (e) A security or other account registered in a transfer-
 98 on-death form.

99 (f) A life insurance policy, annuity, or other similar
 100 contract that is not held within an employee benefit plan or a
 101 tax-qualified retirement account.

102 (4) Subsection (2) does not apply:

103 (a) To the extent that controlling federal law provides
 104 otherwise;

105 (b) If the governing instrument is signed by the decedent,
 106 or on behalf of the decedent, after the order of dissolution or
 107 order declaring the marriage invalid and such governing
 108 instrument expressly provides that benefits will be payable to
 109 the decedent's former spouse;

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

110 (c) To the extent a will or trust governs the disposition
 111 of the assets and s. 732.507(2) or s. 736.1005 applies;

112 (d) If the order of dissolution or order declaring the
 113 marriage invalid requires that the decedent acquire or maintain
 114 the asset for the benefit of a former spouse or children of the
 115 marriage, payable upon the death of the decedent either outright
 116 or in trust, only if other assets of the decedent fulfilling
 117 such a requirement for the benefit of the former spouse or
 118 children of the marriage do not exist upon the death of the
 119 decedent;

120 (e) If, under the terms of the order of dissolution or
 121 order declaring the marriage invalid, the decedent could not
 122 have unilaterally terminated or modified the ownership of the
 123 asset, or its disposition upon the death of the decedent;

124 (f) If the designation of the decedent's former spouse as
 125 a beneficiary is irrevocable under applicable law;

126 (g) If the instrument directing the disposition of the
 127 asset at death is governed by the laws of a state other than
 128 this state;

129 (h) To an asset held in two or more names as to which the
 130 death of one coowner vests ownership of the asset in the
 131 surviving coowner or coowners;

132 (i) If the decedent remarries the person whose interest
 133 would otherwise have been revoked under this section and the
 134 decedent and that person are married to one another at the time
 135 of the decedent's death; or

136 (j) To state-administered retirement plans under chapter
 137 121.

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

138 (5) In the case of an asset described in paragraph (3) (a),
 139 paragraph (3) (b), or paragraph (3) (c), unless payment or
 140 transfer would violate a court order directed to, and served as
 141 required by law on, the payor:

142 (a) If the governing instrument does not explicitly
 143 specify the relationship of the beneficiary to the decedent or
 144 if the governing instrument explicitly provides that the
 145 beneficiary is not the decedent's spouse, the payor is not
 146 liable for making any payment on account of, or transferring any
 147 interest in, the asset to the beneficiary.

148 (b) As to any portion of the asset required by the
 149 governing instrument to be paid after the decedent's death to a
 150 primary beneficiary explicitly designated in the governing
 151 instrument as the decedent's spouse:

152 1. If the death certificate states that the decedent was
 153 married at the time of his or her death to that spouse, the
 154 payor is not liable for making a payment on account of, or for
 155 transferring an interest in, that portion of the asset to such
 156 primary beneficiary.

157 2. If the death certificate states that the decedent was
 158 not married at the time of his or her death, or if the death
 159 certificate states that the decedent was married to a person
 160 other than the spouse designated as the primary beneficiary at
 161 the time of his or her death, the payor is not liable for making
 162 a payment on account of, or for transferring an interest in,
 163 that portion of the asset to a secondary beneficiary under the
 164 governing instrument.

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

165 3. If the death certificate is silent as to the decedent's
 166 marital status at the time of his or her death, the payor is not
 167 liable for making a payment on account of, or for transferring
 168 an interest in, that portion of the asset to the primary
 169 beneficiary upon delivery to the payor of an affidavit validly
 170 executed by the primary beneficiary in substantially the
 171 following form:

172
 173 STATE OF _____

174 COUNTY OF _____

175 Before me, the undersigned authority, personally
 176 appeared ...(type or print affiant's name)...

177 ("Affiant"), who swore or affirmed that:

178 1. ...(Type or print name of decedent)...
 179 ("Decedent") died on ...(type or print the date of the
 180 Decedent's death)....

181 2. Affiant is a "primary beneficiary" as that
 182 term is defined in Section 732.703, Florida Statutes.
 183 Affiant and Decedent were married on ...(type or print
 184 the date of marriage)..., and were legally married to
 185 one another on the date of the Decedent's death.

186
 187 _____
 188 ...(Affiant)...

189 Sworn to or affirmed before me by the affiant who
 190 is personally known to me or who has produced
 191 ...(state type of identification)... as identification
 192 this day of ...(month)..., ...(year)....

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

193 ...(Signature of Officer)...
 194 ...(Print, Type, or Stamp Commissioned name of Notary
 195 Public)...
 196
 197 4. If the death certificate is silent as to the decedent's
 198 marital status at the time of his or her death, the payor is not
 199 liable for making a payment on account of, or for transferring
 200 an interest in, that portion of the asset to the secondary
 201 beneficiary upon delivery to the payor of an affidavit validly
 202 executed by the secondary beneficiary affidavit in substantially
 203 the following form:

204
 205 STATE OF _____
 206 COUNTY OF _____

207 Before me, the undersigned authority, personally
 208 appeared ...(type or print affiant's name)...
 209 ("Affiant"), who swore or affirmed that:

210 1. ...(Type or print name of decedent)...
 211 ("Decedent") died on ...(type or print the date of the
 212 Decedent's death)....

213 2. Affiant is a "secondary beneficiary" as that
 214 term is defined in Section 732.703, Florida Statutes.
 215 On the date of the Decedent's death, the Decedent was
 216 not legally married to the spouse designated as the
 217 "primary beneficiary" as that term is defined in
 218 Section 732.703, Florida Statutes.

219 Sworn to or affirmed before me by the affiant who
 220 is personally known to me or who has produced

ENROLLED

CS/HB 401, Engrossed 1

2012 Legislature

221 ...(state type of identification)... as identification
 222 this day of ...(month)..., ...(year)....
 223 ...(Signature of Officer)...
 224 ...(Print, Type, or Stamp Commissioned name of Notary
 225 Public)...

226
 227 (6) In the case of an asset described in paragraph (3) (d),
 228 paragraph (3) (e), or paragraph (3) (f), the payor is not liable
 229 for making any payment on account of, or transferring any
 230 interest in, the asset to any beneficiary.

231 (7) Subsections (5) and (6) apply notwithstanding the
 232 payor's knowledge that the person to whom the asset is
 233 transferred is different from the person who would own the
 234 interest pursuant to subsection (2).

235 (8) This section does not affect the ownership of an
 236 interest in an asset as between the former spouse and any other
 237 person entitled to such interest by operation of this section,
 238 the rights of any purchaser for value of any such interest, the
 239 rights of any creditor of the former spouse or any other person
 240 entitled to such interest, or the rights and duties of any
 241 insurance company, financial institution, trustee,
 242 administrator, or other third party.

243 (9) This section applies to all designations made by or on
 244 behalf of decedents dying on or after July 1, 2012, regardless
 245 of when the designation was made.

246 Section 2. This act shall take effect July 1, 2012.