

By Representative Goodlette

1 A bill to be entitled
2 An act relating to probate; amending s. 63.172,
3 F.S.; providing for the right of inheritance
4 with respect to adoption; amending s. 409.9101,
5 F.S.; revising language with respect to
6 recovery of payments made on behalf of certain
7 Medicaid-eligible persons; amending s. 655.936,
8 F.S., relating to the opening of a decedent's
9 safe-deposit box; amending s. 731.005, F.S.,
10 relating to the Florida Probate Code; amending
11 s. 731.011, F.S.; providing reference to the
12 Florida Probate Rules with respect to the
13 determination of substantive rights under the
14 Florida Probate Code; amending s. 731.104,
15 F.S.; revising language with respect to the
16 verification of documents; amending s. 731.106,
17 F.S., relating to the assets of
18 nondomiciliaries; repealing s. 731.107, F.S.,
19 relating to adversary proceedings; amending s.
20 731.110, F.S.; revising language with respect
21 to proceedings concerning caveat; repealing s.
22 731.111, F.S., relating to notice to creditors;
23 amending s. 731.201, F.S.; revising general
24 definitions with respect to the Florida Probate
25 Code; amending s. 731.301, F.S.; revising
26 language with respect to notice; amending s.
27 731.303, F.S., relating to representation;
28 amending s. 732.101, F.S., relating to
29 intestate estates; amending s. 732.102, F.S.;
30 revising language with respect to the share of
31 the spouse; increasing the monetary amount of

1 certain shares; amending s. 732.103, F.S.,
2 relating to the share of certain heirs;
3 amending s. 732.107, F.S.; revising language
4 with respect to escheat; amending s. 732.1101,
5 F.S.; providing that aliens shall have the same
6 right of inheritance as citizens; amending s.
7 732.2025, F.S.; redefining the term "qualifying
8 special needs trust" or "supplemental needs
9 trust"; amending s. 732.2085, F.S., relating to
10 liability of direct recipients and
11 beneficiaries; amending s. 732.2125, F.S.;
12 revising language with respect to the right of
13 election; amending s. 732.2135, F.S.; revising
14 language with respect to time of election,
15 extensions, and withdrawal; amending s.
16 732.2145, F.S.; revising language with respect
17 to the order of contribution; amending s.
18 732.2155, F.S.; revising language with respect
19 to the effective date of certain trusts;
20 amending s. 732.218, F.S.; revising language
21 with respect to rebuttable presumptions;
22 amending s. 732.219, F.S., relating to
23 disposition upon death; amending s. 732.221,
24 F.S.; revising language with respect to
25 perfection of title of personal representative
26 or beneficiary; amending s. 732.222, F.S.,
27 relating to the purchaser for value or lender;
28 amending s. 732.223, F.S.; revising language
29 with respect to perfection of title of
30 surviving spouse; amending s. 732.302, F.S.;
31 revising language with respect to pretermitted

1 children; amending s. 732.401, F.S.; revising
2 language with respect to descent of homestead;
3 amending s. 732.4015, F.S.; revising language
4 with respect to the definition of "owner" and
5 "devise" concerning homestead; amending s.
6 732.402, F.S.; revising language with respect
7 to exempt property; amending s. 732.403, F.S.;
8 revising language with respect to family
9 allowance; amending s. 732.501, F.S.; revising
10 language with respect to who may make a will;
11 amending s. 732.502, F.S.; revising language
12 with respect to execution of wills; amending s.
13 732.503, F.S.; revising language with respect
14 to self-proof of will; amending s. 732.505,
15 F.S.; revising language with respect to
16 revocation by writing; amending s. 732.507,
17 F.S.; revising language with respect to effect
18 of subsequent marriage, birth, or dissolution
19 of marriage; amending s. 732.513, F.S.;
20 revising language with respect to devises to
21 trustees; amending s. 732.514, F.S., relating
22 to vesting of devises; amending s. 732.515,
23 F.S.; revising language with respect to
24 separate writing identifying devises of
25 tangible property; amending s. 732.6005, F.S.,
26 relating to rules of construction and
27 intention; amending s. 732.601, F.S.; revising
28 language with respect to the Simultaneous Death
29 Law; amending s. 732.603, F.S.; revising
30 language with respect to antilapse, deceased
31 devises, and class gifts; amending s. 732.604,

1 F.S., relating to the failure of a testamentary
2 provision; amending s. 732.605, F.S., relating
3 to change in securities, accessions, and
4 nonademption; amending s. 732.606, F.S.,
5 relating to nonademption of specific devises in
6 certain cases; amending s. 732.701, F.S.;
7 providing for agreements concerning succession
8 executed by a nonresident under certain
9 circumstances; amending s. 732.702, F.S.;
10 revising language with respect to waiver of
11 spousal rights; amending s. 732.801, F.S.;
12 revising language with respect to disclaimer of
13 interests in property passing by will or
14 intestate succession or under certain powers of
15 appointment; amending s. 732.804, F.S.;
16 providing for provisions relating to
17 disposition of the body; amending s. 732.901,
18 F.S., relating to production of wills,
19 eliminating language with respect to willful
20 failure to deposit the will; transferring and
21 renumbering ss. 732.910, 732.911, 732.912,
22 732.913, 732.914, 732.915, 732.916, 732.917,
23 732.918, 732.9185, 732.919, 732.921, 732.9215,
24 732.92155, 732.9216, and 732.922, F.S., to
25 chapter 765, F.S.; amending s. 733.101, F.S.,
26 relating to the venue of probate proceedings;
27 amending s. 733.103, F.S., relating to the
28 effect of probate; amending s. 733.104, F.S.;
29 revising language with respect to the
30 suspension of the statute of limitations in
31 favor of the personal representative; amending

1 s. 733.105, F.S.; revising language with
2 respect to the determination of beneficiaries;
3 amending s. 733.106, F.S.; revising language
4 with respect to costs and attorney fees;
5 amending s. 733.107, F.S., relating to the
6 burden of proof in contests; amending s.
7 733.109, F.S.; revising language with respect
8 to the revocation of probate; amending s.
9 733.201, F.S., relating to proof of wills;
10 amending s. 733.202, F.S.; providing that any
11 interested person may petition for
12 administration; repealing s. 733.203, F.S.,
13 relating to when notice is required; amending
14 s. 733.204, F.S.; revising language with
15 respect to the probate of a will written in a
16 foreign language; amending s. 733.205, F.S.,
17 relating to the probate of a notarial will;
18 amending s. 733.206, F.S., relating to the
19 probate of a resident after foreign probate;
20 amending s. 733.207, F.S.; revising
21 requirements with respect to the establishment
22 and probate of a lost or destroyed will;
23 amending s. 733.208, F.S.; revising language
24 with respect to the discovery of a later will;
25 amending s. 733.209, F.S.; providing
26 requirements with respect to the estates of
27 missing persons; amending s. 733.212, F.S.;
28 revising language with respect to the notice of
29 administration and filing of objections;
30 creating s. 733.2121, F.S.; providing for
31 notice to creditors and the filing of claims;

1 amending s. 733.2123, F.S., relating to
2 adjudication before issuance of letters;
3 amending s. 733.213, F.S.; providing that a
4 will may not be construed until after it has
5 been admitted to probate; amending s. 733.301,
6 F.S.; revising language with respect to
7 preference in the appointment of the personal
8 representative; amending s. 733.302, F.S.;
9 revising language with respect to who may be
10 appointed personal representative; amending s.
11 733.305, F.S., relating to trust companies and
12 other corporations and associations; amending
13 s. 733.306, F.S.; revising language with
14 respect to the effect of the appointment of a
15 debtor; amending s. 733.307, F.S., relating to
16 succession of administration; amending s.
17 733.308, F.S., relating to the administrator ad
18 litem; amending s. 733.309, F.S., relating to
19 the executor de son tort; creating s. 733.310,
20 F.S.; providing for when a personal
21 representative is not qualified; repealing s.
22 733.401, F.S., relating to the issuance of
23 letters; amending s. 733.402, F.S.; revising
24 language with respect to the bond of a
25 fiduciary; amending s. 733.403, F.S.; revising
26 language with respect to the amount of the
27 bond; amending s. 733.404, F.S., relating to
28 the liability of the surety; amending s.
29 733.405, F.S.; revising language with respect
30 to the release of surety; amending s. 733.406,
31 F.S.; revising language with respect to bond

1 premium allowable as an expense of
2 administration; amending s. 733.501, F.S.;
3 revising language with respect to curators;
4 amending s. 733.502, F.S.; revising language
5 with respect to the resignation of the personal
6 representative; amending s. 733.503, F.S.;
7 providing for the appointment of a successor
8 upon the resignation of the personal
9 representative; creating s. 733.5035, F.S.;
10 providing for the surrender of assets after
11 resignation; creating s. 733.5036, F.S.;
12 providing for accounting and discharge
13 following resignation; amending s. 733.504,
14 F.S.; revising language with respect to the
15 removal of the personal representative;
16 amending s. 733.505, F.S.; providing that a
17 petition for removal shall be filed in the
18 court having jurisdiction of the
19 administration; amending s. 733.506, F.S.;
20 revising language with respect to proceedings
21 for removal; creating s. 733.5061, F.S.;
22 providing for the appointment of a successor
23 upon removal of the personal representative;
24 repealing s. 733.507, F.S., relating to
25 administration following resignation or
26 removal; amending s. 733.508, F.S.; providing
27 for accounting and discharge upon removal;
28 amending s. 733.509, F.S.; revising language
29 with respect to surrender of assets upon
30 removal; amending s. 733.601, F.S.; revising
31 language with respect to time of accrual of

1 duties and powers; amending s. 733.602, F.S.,
2 relating to the general duties of a personal
3 representative; amending s. 733.603, F.S.,
4 relating to when a personal representative may
5 proceed without court order; amending s.
6 733.604, F.S.; revising language with respect
7 to inventory; repealing s. 733.605, F.S.,
8 relating to appraisers; creating s. 733.6065,
9 F.S.; providing for the opening of a
10 safe-deposit box; amending s. 733.607, F.S.;
11 revising language with respect to the
12 possession of the estate; amending s. 733.608,
13 F.S.; revising language with respect to the
14 general power of the personal representative;
15 amending s. 733.609, F.S.; revising language
16 with respect to improper exercise of power and
17 the breach of fiduciary duty; amending s.
18 733.610, F.S., relating to the sale,
19 encumbrance, or transaction involving a
20 conflict of interest; amending s. 733.611,
21 F.S.; revising language with respect to persons
22 dealing with the personal representative;
23 amending s. 733.612, F.S.; revising language
24 with respect to transactions authorized for the
25 personal representatives and exceptions
26 thereto; amending s. 733.6121, F.S., relating
27 to powers of the personal representative with
28 respect to environmental or human health laws
29 affecting property subject to administration;
30 amending s. 733.613, F.S.; revising language
31 with respect to the personal representatives'

1 right to sell real property; amending s.
2 733.614, F.S., relating to the powers and
3 duties of a successor personal representative;
4 amending s. 733.615, F.S.; revising language
5 with respect to joint personal representatives;
6 amending s. 733.616, F.S.; revising language
7 with respect to the powers of the surviving
8 personal representatives; amending s. 733.617,
9 F.S.; revising language with respect to
10 compensation of the personal representative;
11 amending s. 733.6171, F.S.; revising language
12 with respect to compensation of the attorney
13 for the personal representative; amending s.
14 733.6175, F.S.; revising language with respect
15 to proceedings for review of employment of
16 agents and compensation of personal
17 representatives and employees of the estate;
18 amending s. 733.619, F.S., relating to the
19 individual liability of the personal
20 representative; amending s. 733.701, F.S.;
21 revising language with respect to notifying
22 creditors; correcting cross references;
23 amending s. 733.702, F.S.; revising language
24 with respect to limitations on presentation of
25 claims; amending s. 733.703, F.S.; revising
26 language with respect to the form and manner of
27 presenting a claim; amending s. 733.704, F.S.,
28 relating to amendment of claims; amending s.
29 733.705, F.S.; revising language with respect
30 to payment of and objection to claims; amending
31 s. 733.707, F.S.; revising language with

1 respect to the order of payment of expenses and
2 obligations; amending s. 733.708, F.S.;
3 revising language with respect to compromise;
4 amending s. 733.710, F.S., relating to claims
5 against estates; amending s. 733.801, F.S.;
6 providing that the personal representative
7 shall pay as an expense of administration
8 certain costs; amending s. 733.802, F.S.;
9 revising language with respect to proceedings
10 for compulsory payment of devises or
11 distributive interest; amending s. 733.803,
12 F.S., relating to encumbered property; amending
13 s. 733.805, F.S.; revising language with
14 respect to the order in which assets are
15 appropriated; amending s. 733.806, F.S.,
16 relating to advancement; amending s. 733.808,
17 F.S.; revising language with respect to death
18 benefits and disposition of proceeds; amending
19 s. 733.809, F.S., relating to right of
20 retainer; amending s. 733.810, F.S.; revising
21 language with respect to distribution in kind
22 and valuation; amending s. 733.811, F.S.;
23 revising language with respect to the right or
24 title of distributee; amending s. 733.812,
25 F.S.; providing for improper distribution or
26 payment and liability of distributee; amending
27 s. 733.813, F.S., relating to protection of the
28 purchaser from the distributee; amending s.
29 733.814, F.S.; revising language with respect
30 to partition for the purpose of distribution;
31 amending s. 733.815, F.S.; providing for

1 private contracts among certain interested
2 persons; amending s. 733.816, F.S., relating to
3 the distribution of unclaimed property held by
4 the personal representative; amending s.
5 733.817, F.S.; revising language with respect
6 to apportionment of estate taxes; amending s.
7 733.901, F.S.; providing requirements with
8 respect to final discharge; amending s.
9 733.903, F.S.; revising language with respect
10 to subsequent administration; amending s.
11 734.101, F.S., relating to the foreign personal
12 representative; amending s. 734.102, F.S.;
13 revising language with respect to ancillary
14 administration; amending s. 734.1025, F.S.;
15 revising language with respect to the
16 nonresident decedent's testate estate with
17 property not exceeding a certain value in this
18 state; providing for the determination of
19 claims; amending s. 734.104, F.S., relating to
20 foreign wills; amending s. 734.201, F.S.,
21 relating to jurisdiction by act of a foreign
22 personal representative; amending s. 734.202,
23 F.S., relating to jurisdiction by act of
24 decedent; repealing s. 735.101, F.S., relating
25 to family administration and the nature of the
26 proceedings; repealing s. 735.103, F.S.,
27 relating to petition for family administration;
28 repealing s. 735.107, F.S., relating to family
29 administration distribution; amending s.
30 735.201, F.S.; increasing a monetary amount
31 with respect to summary administration;

1 amending s. 735.203, F.S.; revising language
2 with respect to the petition for summary
3 administration; amending s. 735.206, F.S.;
4 revising language with respect to summary
5 administration distribution; amending s.
6 735.2063, F.S.; revising language with respect
7 to notice to creditors; repealing s. 735.209,
8 F.S., relating to joinder of heirs, devisees,
9 or surviving spouse in summary administration;
10 amending s. 735.301, F.S., relating to
11 disposition without administration; amending s.
12 735.302, F.S.; revising language with respect
13 to income tax refunds in certain circumstances;
14 amending s. 737.3054, F.S.; revising language
15 with respect to trustee's duty to pay expenses
16 and obligations of grantor's estate; amending
17 s. 737.306, F.S.; revising language with
18 respect to personal liability of trustee;
19 creating s. 737.3061, F.S.; providing for
20 limitation on actions against certain trusts;
21 amending s. 737.308, F.S.; revising language
22 with respect to notice of trust; amending ss.
23 215.965, 660.46, and 737.111, F.S.; correcting
24 cross references; directing the Division of
25 Statutory Revision and Indexing to change the
26 title of certain parts of the Probate Code;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Paragraphs (b) and (c) of subsection (1) of
2 section 63.172, Florida Statutes, are amended to read:

3 63.172 Effect of judgment of adoption.--

4 (1) A judgment of adoption, whether entered by a court
5 of this state, another state, or of any other place, has the
6 following effect:

7 (b) It terminates all legal relationships between the
8 adopted person and the adopted person's relatives, including
9 the birth parents, except a birth parent who is a petitioner
10 or who is married to a petitioner, so that the adopted person
11 thereafter is a stranger to his or her former relatives for
12 all purposes, including ~~inheritance~~ and the interpretation or
13 construction of documents, statutes, and instruments, whether
14 executed before or after entry of the adoption judgment, that
15 do not expressly include the adopted person by name or by some
16 designation not based on a parent and child or blood
17 relationship, except that rights of inheritance shall be as
18 provided in the Florida Probate Code.

19 (c) Except for rights of inheritance, it creates the
20 relationship between the adopted person and the petitioner and
21 all relatives of the petitioner that would have existed if the
22 adopted person were a blood descendant of the petitioner born
23 within wedlock. This relationship shall be created for all
24 purposes, including ~~inheritance~~ and applicability of statutes,
25 documents, and instruments, whether executed before or after
26 entry of the adoption judgment, that do not expressly exclude
27 an adopted person from their operation or effect.

28 Section 2. Section 409.9101, Florida Statutes, is
29 amended to read:

30 409.9101 Recovery for payments made on behalf of
31 Medicaid-eligible persons.--

1 (1) This section may be cited as the "Medicaid Estate
2 Recovery Act."

3 (2) It is the intent of the Legislature by this
4 section to supplement Medicaid funds that are used to provide
5 medical services to eligible persons. Medicaid estate recovery
6 shall ~~generally~~ be accomplished by the agency through the
7 filing a statement of claim ~~claims~~ against the estate of a
8 ~~estates of~~ deceased Medicaid recipient ~~recipients~~ as provided
9 in part VII of chapter 733. Recovery ~~The recoveries~~ shall be
10 made pursuant to federal authority in s. 13612 of the Omnibus
11 Budget Reconciliation Act of 1993, which amends s. 1917(b)(1)
12 of the Social Security Act, 42 U.S.C. s. 1396p(b)(1).

13 ~~(3) Pursuant to s. 733.212(4)(a), the personal~~
14 ~~representative of the estate of the decedent shall serve the~~
15 ~~agency with a copy of the notice of administration of the~~
16 ~~estate within 3 months after the first publication of the~~
17 ~~notice, unless the agency has already filed a claim pursuant~~
18 ~~to this section.~~

19 ~~(3)(4)~~ The acceptance of public medical assistance, as
20 defined by Title XIX (Medicaid) of the Social Security Act,
21 including mandatory and optional supplemental payments under
22 the Social Security Act, shall create a debt to claim, ~~as~~
23 ~~defined in s. 731.201, in favor of the agency in~~ as an
24 ~~interested person as defined in s. 731.201. The claim amount~~
25 ~~is calculated as~~ the total amount paid to or for the benefit
26 of the recipient for medical assistance ~~on behalf of the~~
27 recipient after the recipient ~~he or she~~ reached 55 years of
28 age. Payment of benefits to a person under the age of 55 years
29 does not create a debt. Upon filing of a statement of claim in
30 the probate proceeding, the agency shall be an interested
31 person as defined in s. 731.201 to the same extent as other

1 ~~estate claimants~~ ~~There is no claim under this section against~~
2 ~~estates of recipients who had not yet reached 55 years of age.~~

3 ~~(4)(5) At the time of filing the claim, The agency may~~
4 ~~reserve the right to amend the claim as a matter of right up~~
5 ~~to 6 months after the service of a notice to creditors on the~~
6 ~~agency amounts based on medical claims submitted by providers~~
7 ~~subsequent to the agency's initial claim calculation.~~

8 ~~(5)(6) The claim of the agency shall be the current~~
9 ~~total allowable amount of Medicaid payments as denoted in the~~
10 ~~agency's provider payment processing system at the time the~~
11 ~~agency's claim or amendment is filed. The agency's provider~~
12 ~~processing system reports shall be admissible as prima facie~~
13 ~~evidence in substantiating the agency's claim.~~

14 ~~(7) The claim of the agency under this section shall~~
15 ~~constitute a Class 3 claim under s. 733.707(1)(c), as provided~~
16 ~~in s. 414.28(1).~~

17 ~~(6)(8) The debt claim created under this section shall~~
18 ~~not be enforced if the recipient is survived by:~~

19 (a) A spouse;

20 (b) A child or children under 21 years of age; or

21 (c) A child or children who are blind or permanently
22 and totally disabled pursuant to the eligibility requirements
23 of Title XIX of the Social Security Act.

24 ~~(7)(9) In accordance with s. 4, Art. X of the State~~
25 ~~Constitution, No debt claim under this section shall be~~
26 ~~enforced against any property that is determined to be exempt~~
27 ~~from the claims of creditors under the constitution or laws of~~
28 ~~this state the homestead of the deceased Medicaid recipient~~
29 ~~and is determined to be exempt from the claims of creditors of~~
30 ~~the deceased Medicaid recipient.~~

31

1 ~~(8)(10)~~ The agency shall not recover from an estate if
2 doing so would cause ~~undue~~ hardship for a beneficiary ~~the~~
3 ~~qualified heirs, as defined in s. 731.201.~~ The personal
4 representative of an estate and any beneficiary heir may
5 request that the agency waive recovery of any or all of the
6 debt when recovery would create a hardship. A hardship does
7 not exist solely because recovery will prevent any
8 beneficiaries heirs from receiving an anticipated inheritance.
9 The following criteria shall be considered by the agency in
10 reviewing a hardship request:

11 (a) The beneficiary heir:

12 1. Currently resides in the residence of the decedent;

13 2. Resided there at the time of the death of the
14 decedent;

15 3. Has made the residence his or her primary residence
16 for the 12 months immediately preceding the death of the
17 decedent; and

18 4. Owns no other residence;

19 (b) The beneficiary heir would be deprived of food,
20 clothing, shelter, or medical care necessary for the
21 maintenance of life or health;

22 (c) The beneficiary heir can document that he or she
23 provided full-time care to the recipient which delayed the
24 recipient's entry into a nursing home. The beneficiary heir
25 must be either the decedent's sibling or the son or daughter
26 of the decedent and must have resided with the recipient for
27 at least 1 year prior to the recipient's death; or

28 (d) The cost involved in the sale of the property
29 would be equal to or greater than the value of the property.

30 ~~(9)(11)~~ Instances arise in Medicaid estate-recovery
31 cases where the assets include a settlement of a claim against

1 a liable third party. The agency's claim under s. 409.910 must
2 be satisfied prior to including the settlement proceeds as
3 estate assets. The remaining settlement proceeds shall be
4 included in the estate and be available to satisfy the
5 Medicaid estate-recovery claim. The Medicaid estate-recovery
6 share shall be one-half of the settlement proceeds included in
7 the estate. Nothing in this subsection is intended to limit
8 the agency's rights against other assets in the estate not
9 related to the settlement. However, in no circumstances shall
10 the agency's recovery exceed the total amount of Medicaid
11 medical assistance provided to the recipient.

12 (10)~~(12)~~ In instances where there are no liquid assets
13 to satisfy the Medicaid estate-recovery claim, if there is
14 nonexempt personal property or nonhomestead real property
15 which is not protected homestead and the costs of sale will
16 not exceed the proceeds, the property shall be sold to satisfy
17 the Medicaid estate-recovery claim. Real property shall not be
18 transferred to the agency in any instance.

19 (11)~~(13)~~ The agency is authorized to adopt rules to
20 implement the provisions of this section.

21 Section 3. Subsection (4) of section 655.936, Florida
22 Statutes, is amended to read:

23 655.936 Delivery of safe-deposit box contents or
24 property held in safekeeping to personal representative.--

25 (4) The initial opening of the decedent's safe-deposit
26 box shall be conducted in the presence of any two of the
27 following persons: an employee of the institution where the
28 box is located, the personal representative, or the personal
29 representative's attorney of record. Each person who is
30 present must verify the contents of the box by signing a copy
31 of the inventory under penalties of perjury. The personal

1 representative shall file the safe-deposit box inventory,
2 together with a copy of the box entry record from a date which
3 is 6 months prior to the date of death to the date of
4 inventory, with the court within 10 days after the box is
5 opened. Unless otherwise ordered by the court, this inventory
6 and the attached box entry record is subject to inspection
7 only by persons entitled to inspect an inventory under s.
8 733.604(1). The personal representative may remove the
9 contents of the box.~~Notwithstanding other provisions of this~~
10 ~~section, the initial opening of any safe-deposit box of the~~
11 ~~decedent must be conducted in the presence of an employee of~~
12 ~~the institution where the box is located and the personal~~
13 ~~representative. The inventory of the contents of the box also~~
14 ~~must be conducted in the presence of the employee and the~~
15 ~~personal representative, each of whom must verify the contents~~
16 ~~of the box by signing a copy of the inventory. The personal~~
17 ~~representative shall file the safe-deposit box inventory with~~
18 ~~the court within 10 days after the box is opened.~~

19 Section 4. Section 731.005, Florida Statutes, is
20 amended to read:

21 731.005 Short title.--Chapters 731-735 shall be known
22 and may be cited as the Florida Probate Code and ~~herein~~
23 referred to as "the code" ~~in this act.~~

24 Section 5. Section 731.011, Florida Statutes, is
25 amended to read:

26 731.011 Determination of substantive rights;
27 procedures.--~~The code became Florida Probate Code shall become~~
28 effective on January 1, 1976. The substantive rights of all
29 persons that ~~have~~ vested prior to January 1, 1976, shall be
30 determined as provided in former chapters 731-737 and 744-746
31 ~~as they existed prior to January 1, 1976.~~ The procedures for

1 the enforcement of vested substantive rights ~~that have vested~~
2 ~~before January 1, 1976,~~ shall be as provided in the Florida
3 Probate Rules ~~this code.~~

4 Section 6. Section 731.104, Florida Statutes, is
5 amended to read:

6 731.104 Verification of documents.--When verification
7 of a document is required in this code or by rule, the
8 document filed shall include an oath or affirmation as
9 provided in the Florida Probate Rules ~~or the following~~
10 ~~statement: "Under penalties of perjury, I declare that I have~~
11 ~~read the foregoing, and the facts alleged are true, to the~~
12 ~~best of my knowledge and belief."~~ Any person who shall
13 willfully includes ~~include~~ a false statement in the document
14 shall be guilty of perjury ~~and upon conviction shall be~~
15 ~~punished accordingly.~~

16 Section 7. Section 731.106, Florida Statutes, is
17 amended to read:

18 731.106 Assets of nondomiciliaries.--

19 (1) ~~For purposes of aiding the determination~~
20 ~~concerning location of assets that may be relevant in cases~~
21 ~~involving nondomiciliaries,~~ A debt in favor of a
22 nondomiciliary, other than one evidenced by investment or
23 commercial paper or other instrument, is located in the county
24 where the debtor resides or, if the debtor is not a person
25 ~~other than~~ an individual, at the place where the debtor has
26 its principal office. Commercial paper, investment paper, and
27 other instruments are located where the instrument is at the
28 time of death.

29 (2) When a nonresident decedent, whether or not ~~who is~~
30 a citizen of the United States, ~~or a citizen or subject of a~~
31 ~~foreign country~~ provides by ~~in her or his~~ will that the

1 testamentary disposition of ~~her or his~~ tangible or intangible
2 personal property having a situs within this state, or of ~~her~~
3 ~~or his~~ real property in this state, shall be construed and
4 regulated by the laws of this state, the validity and effect
5 of the dispositions shall be determined by Florida law. The
6 court may, and in the case of a decedent who was at the time
7 of death a resident of a foreign country the court shall,
8 direct the personal representative appointed in this state to
9 make distribution directly to those designated by the
10 decedent's will as beneficiaries of the tangible or intangible
11 property or to the persons entitled to receive the decedent's
12 personal estate under the laws of the decedent's domicile, ~~as~~
13 ~~the case may be.~~

14 Section 8. Section 731.107, Florida Statutes, is
15 repealed:

16 ~~731.107 Adversary proceedings.--The rules of civil~~
17 ~~procedure shall be applied in any adversary proceeding in~~
18 ~~probate.~~

19 Section 9. Section 731.110, Florida Statutes, is
20 amended to read:

21 731.110 Caveat; proceedings.--

22 (1) Any person, including a creditor, who ~~if any~~
23 ~~creditor of the estate of a decedent~~ is apprehensive that an
24 estate, either testate or intestate, will be administered
25 ~~without the creditor's knowledge, or if any person other than~~
26 ~~a creditor is apprehensive that an estate may be administered,~~
27 or that a will may be admitted to probate, ~~without the~~
28 person's knowledge, ~~he or she~~ may file a caveat with the
29 court.

30 (2) A ~~No~~ caveat shall contain ~~be effective unless it~~
31 ~~contains~~ the decedent's social security number, last known

1 residence address, and ~~or~~ date of birth, if they are known, as
2 ~~an~~ identification number, a statement of the interest of the
3 caveator in the estate, the name and specific residence
4 address of the caveator, and, if the caveator, other than a
5 state agency, is a nonresident of the county, the additional
6 name and specific residence address of some person residing in
7 the county, or office address of a member of The Florida Bar
8 residing in Florida, designated as the agent of the caveator,
9 upon whom service may be made.

10 Section 10. Section 731.111, Florida Statutes, is
11 repealed:

12 ~~731.111 Notice to creditors.--~~

13 ~~(1) When a notice to creditors is required, a notice~~
14 ~~shall be published once a week for 2 consecutive weeks, two~~
15 ~~publications being sufficient, in a newspaper published in the~~
16 ~~county in which the estate is administered or, if there is no~~
17 ~~newspaper published in the county, in a newspaper of general~~
18 ~~circulation in that county. Proof of publication shall be~~
19 ~~filed. The notice shall notify all persons having claims or~~
20 ~~demands against the estate to file their claims with the clerk~~
21 ~~within the time periods set forth in s. 733.702 with respect~~
22 ~~to notice of administration, or be forever barred. The notice~~
23 ~~shall contain the name of the decedent, the file number of the~~
24 ~~estate, the designation and address of the court in which the~~
25 ~~proceedings are pending, the name and address of the person~~
26 ~~causing the notice to be published, and the name and address~~
27 ~~of his or her attorney, and state the date of first~~
28 ~~publication.~~

29 ~~(2) Notwithstanding the provisions of subsection (1),~~
30 ~~the Department of Revenue is not barred from filing a claim~~
31 ~~against the estate of a decedent for taxes due under chapter~~

1 ~~199 after the expiration of the time for filing claims~~
2 ~~provided in subsection (1), provided the department files its~~
3 ~~claim within 30 days after the service of the inventory or~~
4 ~~federal estate tax return on the department as provided in s.~~
5 ~~198.13, whichever shall last occur. Additionally, in the event~~
6 ~~that the information contained therein is amended or~~
7 ~~supplemented, the department has the right to file its claim~~
8 ~~or amend a previously filed claim within 30 days after the~~
9 ~~service of such information.~~

10 Section 11. Section 731.201, Florida Statutes, is
11 amended to read:

12 731.201 General definitions.--Subject to additional
13 definitions in subsequent chapters that are applicable to
14 specific chapters or parts, and unless the context otherwise
15 requires, in this code, in s. 409.9101, and in chapters 737,
16 738, and 744:

17 (1) "Authenticated," when referring to copies of
18 documents or judicial proceedings required to be filed with
19 the court under this code, shall mean a certified copy or a
20 copy authenticated according to the Federal Rules of Civil
21 Procedure ~~28 U.S.C. s. 1733 or s. 1741.~~

22 (2) "Beneficiary" means heir at law, in an intestate
23 estate, and devisee, in a testate estate. The term
24 "beneficiary" does not apply to an heir at law or a devisee
25 after that person's ~~his or her~~ interest in the estate has been
26 satisfied. In the case of a devise to an existing trust or
27 trustee, or to a trust or trustee described by will, in the
28 absence of a conflict of interest of the trust, the trustee is
29 a beneficiary of the estate. An owner of a beneficial interest
30 in the trust is a beneficiary of the trust and is, in the
31

1 absence of a conflict of interest of the trust, not a
2 beneficiary of the estate.

3 (3) "Child" includes a person entitled to take as a
4 child under this code by intestate succession from the parent
5 whose relationship is involved, and excludes any person who is
6 only a stepchild, a foster child, a grandchild, or a more
7 remote descendant.

8 (4) "Claim ~~Claims~~" means a liability ~~liabilities~~ of
9 the decedent, whether arising in contract, tort, or otherwise,
10 and funeral expense ~~expenses~~. The term does not include an
11 expense ~~expenses~~ of administration or estate, inheritance,
12 succession, or other death taxes.

13 (5) "Clerk" means the clerk or deputy clerk of the
14 court.

15 (6) "Court" means the circuit court.

16 (7) "Curator" means a person appointed by the court to
17 take charge of the estate of a decedent until letters are
18 issued.

19 (8) "Devise," when used as a noun, means a
20 testamentary disposition of real or personal property and,
21 when used as a verb, means to dispose of real or personal
22 property by will or trust. The term includes "gift," "give,"
23 "bequeath," "bequest," and "legacy." A devise is subject to
24 charges for debts, expenses, and taxes as provided in this
25 code, ~~or in~~ the will, or the trust.

26 (9) "Devisee" means a person designated in a will or
27 trust to receive a devise. In the case of a devise to an
28 existing trust or trustee, or to a trustee of a trust
29 described by will, the trust or trustee is the devisee. The
30 beneficiaries of the trust are not devisees.

31

1 (10) "Distributee" means a person who has received
2 estate property from a personal representative or other
3 fiduciary other than as a creditor or purchaser. A
4 testamentary trustee is a distributee only to the extent of
5 distributed assets or increments to them remaining in the
6 trustee's his or her hands. A beneficiary of a testamentary
7 trust to whom the trustee has distributed property received
8 from a personal representative is a distributee. For purposes
9 of this provision, "testamentary trustee" includes a trustee
10 to whom assets are transferred by will, to the extent of the
11 devised assets.

12 (11) "Domicile" means ~~shall be~~ a person's usual place
13 of dwelling and shall be synonymous with "residence."

14 (12) "Estate" means the property of a decedent that is
15 the subject of administration.

16 (13) "Exempt property" means the property of a
17 decedent's estate which is described in s. 732.402.

18 (14) "File" means to file with the court or clerk.

19 (15) "Foreign personal representative" means a
20 personal representative of another state or a foreign country.

21 (16) "Formal notice" means formal notice under the
22 Florida Probate Rules s. 731.301(1).

23 (17) "Grantor" means one who creates or adds to a
24 trust and includes "settlor" or "trustor" and a testator who
25 creates or adds to a trust.

26 (18) "Heirs" or "heirs at law" means those persons,
27 including the surviving spouse, who are entitled under the
28 statutes of intestate succession to the property of a
29 decedent.

30 (19) "Incompetent" means a minor or a person
31 adjudicated incompetent.

1 (20) "Informal notice" or "notice" means informal
2 notice under the Florida Probate Rules ~~s. 731.301(2)~~.

3 (21) "Interested person" means any person who may
4 reasonably be expected to be affected by the outcome of the
5 particular proceeding involved. In any proceeding affecting
6 the estate or the rights of a beneficiary in the estate, the
7 personal representative of the estate shall be deemed to be an
8 interested person. In any proceeding affecting the expenses
9 of the administration and obligations of a decedent's estate
10 ~~of the estate, or any claims described in s. 733.702(1)~~, the
11 trustee of a trust described in s. 733.707(3) is an interested
12 person in the administration of the grantor's estate. The
13 term does not include a beneficiary ~~an heir at law or a~~
14 ~~devisee~~ who has received complete ~~his or her~~ distribution.
15 The meaning, as it relates to particular persons, may vary
16 from time to time and must be determined according to the
17 particular purpose of, and matter involved in, any
18 proceedings.

19 (22) "Letters" means authority granted by the court to
20 the personal representative to act on behalf of the estate of
21 the decedent and refers to what has been known as letters
22 testamentary and letters of administration. All letters shall
23 be designated "letters of administration."

24 (23) "Other state" means any state of the United
25 States other than Florida and includes the District of
26 Columbia, the Commonwealth of Puerto Rico, and any territory
27 or possession subject to the legislative authority of the
28 United States.

29 (24) "Parent" excludes any person who is only a
30 stepparent, foster parent, or grandparent.

31

1 (25) "Personal representative" means the fiduciary
2 appointed by the court to administer the estate and refers to
3 what has been known as an administrator, administrator cum
4 testamento annexo, administrator de bonis non, ancillary
5 administrator, ancillary executor, or executor.

6 (26) "Petition" means a written request to the court
7 for an order.

8 (27) "Probate of will" means all steps necessary to
9 establish the validity of a will and to admit a will to
10 probate.

11 (28) "Property" means both real and personal property
12 or any interest in it and anything that may be the subject of
13 ownership.

14 (29) "Protected homestead" means the property
15 described in s. 4(a)(1), Art. X of the State Constitution
16 which at the death of the owner the exemption inures to the
17 owner's surviving spouse or heirs under s. 4(b), Art. X of the
18 State Constitution. For purposes of the code, real property
19 owned as tenants by the entirety is not protected homestead.

20 ~~(30)(29)~~ "Residence" means a person's ~~usual~~ place of
21 dwelling ~~and is synonymous with "domicile."~~

22 ~~(31)(30)~~ "Residuary devise" means a devise of the
23 assets of the estate which remain after the provision for any
24 devise which is to be satisfied by reference to a specific
25 property or type of property, fund, sum, or statutory amount.
26 If the will contains no devise which is to be satisfied by
27 reference to a specific property or type of property, fund,
28 sum, or statutory amount, "residuary devise" or "residue"
29 means a devise of all assets remaining after satisfying the
30 obligations of the estate.

31

1 (32)~~(31)~~ "Security" means a security as defined in s.
2 517.021.

3 (33)~~(32)~~ "Security interest" means a security interest
4 as defined in s. 671.201.

5 (34)~~(33)~~ "Trust" means an express trust, private or
6 charitable, with additions to it, wherever and however
7 created. It also includes a trust created or determined by a
8 judgment or decree under which the trust is to be administered
9 in the manner of an express trust. "Trust" excludes other
10 constructive trusts, and it excludes resulting trusts;
11 conservatorships; ~~personal representatives~~; custodial
12 arrangements pursuant to the Florida Uniform Transfers Gifts
13 to Minors Act; business trusts providing for certificates to
14 be issued to beneficiaries; common trust funds; land trusts
15 under s. 689.05; trusts created by the form of the account or
16 by the deposit agreement at a financial institution; voting
17 trusts; security arrangements; liquidation trusts; trusts for
18 the primary purpose of paying debts, dividends, interest,
19 salaries, wages, profits, pensions, or employee benefits of
20 any kind; and any arrangement under which a person is nominee
21 or escrowee for another.

22 (35)~~(34)~~ "Trustee" includes an original, additional,
23 surviving, or successor trustee, whether or not appointed or
24 confirmed by court.

25 (36)~~(35)~~ "Will" means an instrument, including a
26 codicil, executed by a person in the manner prescribed by this
27 code, which disposes of the person's property on or after his
28 or her death and includes an instrument which merely appoints
29 a personal representative or revokes or revises another will.

30 Section 12. Section 731.301, Florida Statutes, is
31 amended to read:

1 731.301 Notice; ~~method and time; proof.~~--
2 (1) ~~FORMAL NOTICE.~~--
3 (a) When ~~formal~~ notice to an interested person of a
4 petition or other proceeding is required, the notice shall be
5 given to the petitioner shall serve a copy of the petition to
6 any interested person or that person's her or his attorney as
7 provided in the Florida Probate Rules, if the interested
8 person has appeared by attorney or requested that notice be
9 sent to her or his attorney. The petition shall be served:
10 i. ~~By any form of mail or by any commercial delivery~~
11 ~~service approved by the chief judge of each judicial circuit,~~
12 ~~requiring a signed receipt, as follows:~~
13 a. ~~On the interested person's attorney of record, if~~
14 ~~any, or to the post office address given in her or his demand~~
15 ~~for notice, if any;~~
16 b. ~~On an individual, other than an incompetent, by~~
17 ~~mailing a copy to the individual's dwelling house or usual~~
18 ~~place of abode or to the place where she or he regularly~~
19 ~~conducts her or his business or profession;~~
20 c. ~~On an incompetent person, by mailing a copy to the~~
21 ~~incompetent, to the person having custody of the incompetent,~~
22 ~~and to any legal guardian of the incompetent, at their~~
23 ~~respective dwelling houses, usual places of abode, or regular~~
24 ~~places of business or profession;~~
25 d. ~~On a corporation, by mailing a copy to the~~
26 ~~corporation at its last known address; or~~
27 2. ~~As provided in chapter 48; or~~
28 3. ~~In the circumstances provided in chapter 49, in the~~
29 ~~manner provided therein.~~
30 (b) ~~If there is no answer served on the petitioner~~
31 ~~within 20 days from the service of the petition, the petition~~

1 ~~shall be considered ex parte. If an answer is served, a~~
2 ~~hearing shall be set and reasonable notice given.~~

3 ~~(c) If service is made under subparagraph (a)2. or~~
4 ~~subparagraph (a)3., proof shall be made as provided in chapter~~
5 ~~48 or chapter 49. If service is made by mail under~~
6 ~~subparagraph (a)1., proof shall be by a verified statement of~~
7 ~~the person mailing service who shall attach the signed receipt~~
8 ~~or other evidence satisfactory to the court that delivery was~~
9 ~~made to, or refused by, the addressee or the addressee's~~
10 ~~agent.~~

11 ~~(2)(d)~~ Formal notice shall be sufficient to acquire
12 jurisdiction over the person receiving formal notice to the
13 extent of the person's interest in the estate.

14 ~~(2) INFORMAL NOTICE.--~~

15 ~~(a) When informal notice of a petition or other~~
16 ~~proceeding is required or permitted, it shall be served on the~~
17 ~~person or the person's attorney as provided in the Florida~~
18 ~~Rules of Civil Procedure relating to service of pleadings.~~

19 ~~(b) Proof of service shall be made by filing an~~
20 ~~attorney's certificate of service or, if filed by a person who~~
21 ~~is not a member of The Florida Bar, by a verified statement.~~

22 ~~(3) EFFECT OF NOTICE.--~~Persons given notice of any
23 proceeding ~~petition~~ shall be bound by all orders entered in
24 that proceeding ~~on the petition.~~

25 ~~(4) INFORMAL NOTICE REQUIRED.--~~Unless otherwise
26 ~~specifically provided, informal notice of every petition~~
27 ~~affecting property rights or interests must be given to~~
28 ~~interested persons.~~

29 Section 13. Section 731.303, Florida Statutes, is
30 amended to read:

31

1 731.303 Representation.--In proceedings involving
2 estates of decedents or trusts, the following apply:

3 ~~(1) Interests to be affected shall be described in~~
4 ~~pleadings that give information by name or class, by reference~~
5 ~~to the instrument creating the interests, or in another~~
6 ~~appropriate manner.~~

7 (1)~~(2)~~ Persons are bound by orders binding others in
8 the following cases:

9 (a) Orders binding the sole holder or all coholders of
10 a power of revocation or a general, special, or limited power
11 of appointment, including one in the form of a power of
12 amendment or revocation to the extent that the power has not
13 become unexercisable in fact, bind all persons to the extent
14 that their interests, as persons who may take by virtue of the
15 exercise or nonexercise of the power, are subject to the
16 power.

17 (b) To the extent there is no conflict of interest
18 between them or among the persons represented:

19 1. Orders binding a guardian of the property bind the
20 ward ~~whose estate he or she controls.~~

21 2. Orders binding a trustee bind beneficiaries of the
22 trust in proceedings to probate a will, in establishing or
23 adding to a trust, in reviewing the acts or accounts of a
24 prior fiduciary, and in proceedings involving creditors or
25 other third parties.

26 3. Orders binding a personal representative bind
27 persons interested in the undistributed assets of a decedent's
28 estate, in actions or proceedings by or against the estate.

29 (c) An unborn or unascertained person, or a minor or
30 any other person under a legal disability, who is not
31 otherwise represented is bound by an order to the extent that

1 person's ~~his or her~~ interest is represented by another party
2 having the same or greater quality of interest in the
3 proceeding.

4 ~~(2)(3)~~ Orders binding a guardian of the person shall
5 not bind the ward.

6 ~~(3)(4)~~ Notice is required as follows:

7 (a) Notice as prescribed by the Florida Probate Rules
8 ~~s. 731.301~~ shall be given to every interested person, or to
9 one who can bind the interested person as described in
10 paragraph~~(1)(2)~~(a) or paragraph~~(1)(2)~~(b). Notice may be
11 given both to the interested person and to another who can
12 bind him or her.

13 (b) Notice is given to unborn or unascertained persons
14 who are not represented pursuant to paragraph~~(1)(2)~~(a) or
15 paragraph~~(1)(2)~~(b) by giving notice to all known persons
16 whose interests in the proceedings are the same as, or of a
17 greater quality than, those of the unborn or unascertained
18 persons.

19 ~~(4)(5)~~ If the court determines that representation of
20 the interest would otherwise be inadequate, the court may, at
21 any time, appoint a guardian ad litem to represent the
22 interests of an incapacitated ~~incompetent~~ person, an unborn or
23 unascertained person, a minor or any other person otherwise
24 under a legal disability, or a person whose identity or
25 address is unknown. If not precluded by conflict of interest,
26 a guardian ad litem may be appointed to represent several
27 persons or interests.

28 ~~(5)(6)~~ Agreements, waivers, consents, approvals,
29 accounts, or other statements that fully disclose the matters
30 that ~~which~~ are the subject of the ~~such~~ accounts or statements
31 and that bind the sole holder or all coholders of a general,

1 special, or limited power of appointment, including a power of
2 amendment or revocation to the extent that the power has not
3 become unexercisable in fact, bind all persons to the extent
4 that their interests, as persons who may take by virtue of the
5 exercise or nonexercise of the power, are subject to the
6 power.

7 Section 14. Subsection (2) of section 732.101, Florida
8 Statutes, is amended to read:

9 732.101 Intestate estate.--

10 (2) The decedent's death is the event that vests the
11 heirs' right to the decedent's intestate property.

12 Section 15. Section 732.102, Florida Statutes, is
13 amended to read:

14 732.102 Spouse's share of intestate estate ~~Share of~~
15 ~~spouse~~.--

16 ~~(1)~~ The intestate share of the surviving spouse is:

17 (1)~~(a)~~ If there is no surviving lineal descendant of
18 the decedent, the entire intestate estate.

19 (2)~~(b)~~ If there are surviving lineal descendants of
20 the decedent, all of whom are also lineal descendants of the
21 surviving spouse ~~also~~, the first \$60,000~~\$20,000~~ of the
22 intestate estate, plus one-half of the balance of the
23 intestate estate. Property allocated ~~hereunder~~ to the
24 surviving spouse to satisfy the \$60,000~~\$20,000~~ shall be
25 valued at the fair market value on the date of distribution
26 ~~the decedent's death~~.

27 (3)~~(c)~~ If there are surviving lineal descendants, one
28 or more of whom are not lineal descendants of the surviving
29 spouse, one-half of the intestate estate.

30 ~~(2) The court shall allot the property to which the~~
31 ~~spouse is entitled, treating all beneficiaries equitably.~~

1 Section 16. Paragraph (c) of subsection (4) and
2 subsection (5) of section 732.103, Florida Statutes, are
3 amended to read:

4 732.103 Share of other heirs.--The part of the
5 intestate estate not passing to the surviving spouse under s.
6 732.102, or the entire intestate estate if there is no
7 surviving spouse, descends as follows:

8 (4) If there is none of the foregoing, the estate
9 shall be divided, one-half of which shall go to the decedent's
10 paternal, and the other half to the decedent's maternal,
11 kindred in the following order:

12 (c) If there is either no paternal kindred or ~~if there~~
13 ~~is~~ no maternal kindred, the estate shall go to ~~such of the~~
14 other kindred who as shall survive, in the order stated above
15 aforsaid.

16 (5) If there is no kindred of either part, the whole
17 of the ~~such~~ property shall go to the kindred of the last
18 deceased spouse of the decedent as if the deceased spouse had
19 survived the decedent and then died intestate entitled to the
20 estate.

21 Section 17. Section 732.107, Florida Statutes, is
22 amended to read:

23 732.107 Escheat.--

24 (1) When a person dies leaving an estate ~~dies~~ without
25 being survived by any person entitled to a part of it, that
26 part the property shall escheat to the state.

27 ~~(2)(a) In this event, or when doubt exists about the~~
28 ~~existence of any person entitled to the estate, the personal~~
29 ~~representative shall institute a proceeding for the~~
30 ~~determination of beneficiaries, as provided in this code,~~
31 ~~within 1 year after letters have been issued to him or her,~~

1 ~~and notice shall be served on the Department of Legal Affairs.~~
2 ~~If the personal representative fails to institute the~~
3 ~~proceeding within the time fixed, it may be instituted by the~~
4 ~~Department of Legal Affairs.~~

5 ~~(b) On or before January 15 of each year, each court~~
6 ~~shall furnish to the department a list of all estates being~~
7 ~~administered in which no person appears to be entitled to the~~
8 ~~property and the personal representative has not instituted a~~
9 ~~proceeding for the determination of beneficiaries.~~

10 ~~(3) If the court determines that there is no person~~
11 ~~entitled to the estate and that the estate escheats, the~~
12 ~~property Property that escheats shall be sold as provided in~~
13 ~~the Florida Probate Rules and the proceeds paid to the~~
14 ~~Treasurer of the state and deposited ~~by him or her~~ in the~~
15 ~~State School Fund ~~within a reasonable time to be fixed by the~~~~
16 ~~court.~~

17 ~~(3)(4) At any time within 10 years after the payment~~
18 ~~to the Treasurer ~~granting of letters~~, a person claiming to be~~
19 ~~entitled to the proceeds ~~estate of the decedent~~ may ~~petition~~~~
20 ~~to reopen the administration to and assert entitlement ~~his or~~~~
21 ~~her rights to the proceeds ~~escheated property~~. ~~If the claimant~~~~
22 ~~is entitled to any of the estate of the decedent, the court~~
23 ~~shall fix the amount to which he or she is entitled, and it~~
24 ~~shall be repaid to him or her with interest at the legal rate~~
25 ~~by the officials charged with the disbursement of state school~~
26 ~~funds. Any entitlement shall include interest at the legal~~
27 ~~rate. ~~If no claim is timely asserted ~~within the time fixed~~,~~~~
28 ~~the title of the state's rights to state to the property and~~
29 ~~the proceeds shall become absolute.~~

30 ~~(4)(5) The Department of Legal Affairs shall represent~~
31 ~~the state in all proceedings concerning escheated estates.~~

1 (5)(6)(a) If a person entitled to the proceeds funds
2 assigns the ~~his or her~~ rights to receive payment to an
3 attorney or private investigative agency which is duly
4 licensed to do business in this state pursuant to a written
5 agreement with that ~~such~~ person, the Department of Banking and
6 Finance is authorized to make distribution in accordance with
7 the ~~such~~ assignment.

8 (b) Payments made to an attorney or private
9 investigative agency shall be promptly deposited into a trust
10 or escrow account which is regularly maintained by the
11 attorney or private investigative agency in a financial
12 institution authorized to accept ~~such~~ deposits and located in
13 this state.

14 (c) Distribution by the attorney or private
15 investigative agency to the person entitled to the proceeds
16 ~~funds~~ shall be made within 10 days following final credit of
17 the deposit into the trust or escrow account at the financial
18 institution, unless a party to the agreement protests the ~~in~~
19 ~~writing~~ ~~such~~ distribution in writing before it is made.

20 (d) The department shall not be civilly or criminally
21 liable for any proceeds funds distributed pursuant to this
22 subsection, provided such distribution is made in good faith.

23 ~~(7) Except as herein provided, escheated estates shall~~
24 ~~be administered as other estates.~~

25 Section 18. Section 732.1101, Florida Statutes, is
26 amended to read:

27 732.1101 Aliens.--Aliens shall have the same rights of
28 inheritance as citizens ~~No person is disqualified to take as~~
29 ~~an heir because he or she, or a person through whom he or she~~
30 ~~claims, is, or has been, an alien.~~

31

1 Section 19. Subsection (8) of section 732.2025,
2 Florida Statutes, is amended to read:

3 732.2025 Definitions.--As used in ss.
4 732.2025-732.2155, the term:

5 (8) "Qualifying special needs trust" or "supplemental
6 needs trust" means a trust established for an ill or disabled
7 surviving spouse with court approval before or after a
8 decedent's death ~~for such incapacitated surviving spouse~~, if,
9 commencing on the decedent's death:

10 (a) The income and principal are distributable to or
11 for the benefit of the spouse for life in the discretion of
12 one or more trustees less than half of whom are ineligible
13 family trustees. For purposes of this paragraph, ineligible
14 family trustees include the decedent's grandparents and any
15 descendants of the decedent's grandparents who are not also
16 descendants of the surviving spouse; and

17 (b) During the spouse's life, no person other than the
18 spouse has the power to distribute income or principal to
19 anyone other than the spouse.

20 (c) The requirement for court approval and the
21 limitation on ineligible family trustees shall not apply if
22 the aggregate of the trust property as of the applicable
23 valuation date in a qualifying special needs trust is less
24 than \$100,000.

25 Section 20. Paragraph (a) of subsection (3) of section
26 732.2085, Florida Statutes, is amended to read:

27 732.2085 Liability of direct recipients and
28 beneficiaries.--

29 (3) If a person pays the value of the property on the
30 date of a sale or exchange or contributes all of the property
31 received, as provided in paragraph (2)(b):

1 (a) No further contribution toward satisfaction of the
2 elective share shall be required with respect to that ~~such~~
3 property.

4 Section 21. Subsection (2) of section 732.2125,
5 Florida Statutes, is amended to read:

6 732.2125 Right of election; by whom exercisable.--The
7 right of election may be exercised:

8 (2) With approval of the court having jurisdiction of
9 the probate proceeding by an attorney in fact or a guardian of
10 the property of the surviving spouse, ~~with approval of the~~
11 ~~court having jurisdiction of the probate proceeding.~~ The court
12 shall determine the election as the best interests of the
13 surviving spouse, during the spouse's probable lifetime,
14 require.

15 Section 22. Section 732.2135, Florida Statutes, is
16 amended to read:

17 732.2135 Time of election; extensions; withdrawal.--

18 (1) Except as provided in subsection (2), the election
19 must be filed within the earlier of 6 months of the date of
20 service of a copy of the first publication of notice of
21 administration on the surviving spouse, or an attorney in fact
22 or guardian of the property of the surviving spouse, or 2
23 years after the date of the decedent's death.

24 (2) Within the period provided in subsection (1), the
25 surviving spouse or an attorney in fact or guardian of the
26 property of the surviving spouse may petition the court for an
27 extension of time for making an election. ~~After notice and~~
28 ~~hearing, the court~~ For good cause shown the court may extend
29 the time for election. If the court grants the petition for an
30 extension, the election must be filed within the time allowed
31 by the extension.

1 (3) The surviving spouse or an attorney in fact,
2 guardian of the property, or personal representative of the
3 surviving spouse may withdraw an election at any time within 8
4 months of the decedent's death and before the court's order of
5 contribution. If an election is withdrawn, the court may
6 assess attorney's fees and costs against the surviving spouse
7 or the surviving spouse's estate.

8 (4) A petition for an extension of the time for making
9 the election or for approval to make the election shall toll
10 the time for making the election.

11 Section 23. Subsections (1) and (4) of section
12 732.2145, Florida Statutes, are amended to read:

13 732.2145 Order of contribution; personal
14 representative's duty to collect contribution.--

15 (1) The court shall determine the elective share and
16 ~~shall order~~ contribution. ~~All~~ Contributions shall ~~are to~~ bear
17 interest at the statutory rate ~~provided in s. 55.03(1)~~
18 beginning 90 days after ~~from the date of the order of~~
19 contribution. The order ~~of contribution~~ is prima facie correct
20 in proceedings in any court or jurisdiction.

21 (4) Nothing in this section limits the independent
22 right of the surviving spouse to collect the elective share as
23 provided in the order of contribution, and that right is
24 hereby conferred. If the surviving spouse brings an action to
25 enforce the ~~an order of contribution~~, the judgment shall
26 include the surviving spouse's costs and reasonable attorney's
27 fees.

28 Section 24. Subsection (4) of section 732.2155,
29 Florida Statutes, is amended to read:

30 732.2155 Effective date; effect of prior waivers;
31 transition rules.--

1 (4) Notwithstanding anything in s. 732.2045(1)(a) to
2 the contrary, any trust created by the decedent before the
3 effective date of ss. 732.201-732.2145 ~~this section~~ that meets
4 the requirements of an elective share trust is treated as if
5 the decedent created the trust after the effective date of
6 these sections ~~this subsection~~ and in satisfaction of the
7 elective share.

8 Section 25. Subsection (2) of section 732.218, Florida
9 Statutes, is amended to read:

10 732.218 Rebuttable presumptions.--In determining
11 whether ss. 732.216-732.228 apply to specific property, the
12 following rebuttable presumptions apply:

13 (2) Real property located in this state, other than
14 homestead and real property held as tenants by the entirety
15 ~~and homestead~~, and personal property wherever located acquired
16 by a married person while domiciled in a jurisdiction under
17 whose laws property could not then be acquired as community
18 property and title to which was taken in a form which created
19 rights of survivorship are presumed ~~not~~ to be property to
20 which these sections do not apply.

21 Section 26. Section 732.219, Florida Statutes, is
22 amended to read:

23 732.219 Disposition upon death.--Upon the death of a
24 married person, one-half of the property to which ss.
25 732.216-732.228 apply is the property of the surviving spouse
26 and is not subject to testamentary disposition by the decedent
27 or distribution under the laws of succession of this state.
28 One-half of that property is the property of the decedent and
29 is subject to testamentary disposition or distribution under
30 the laws of succession of this state. The decedent's one-half
31

1 of ~~that the~~ property is not in the elected estate ~~subject to~~
2 ~~the surviving spouse's right to elect against the will.~~

3 Section 27. Section 732.221, Florida Statutes, is
4 amended to read:

5 732.221 Perfection of title of personal representative
6 or beneficiary, ~~heir, or devisee.~~--If the title to any
7 property to which ss. 732.216-732.228 apply is held by the
8 surviving spouse at the time of the decedent's death, the
9 personal representative or a beneficiary ~~an heir or devisee~~ of
10 the decedent may institute an action to perfect title to the
11 property. The personal representative has no ~~fiduciary~~ duty
12 to discover whether any property held by the surviving spouse
13 is property to which ss. 732.216-732.228 ~~these sections~~ apply,
14 unless a written demand is made by a beneficiary ~~an heir,~~
15 ~~devisee, or creditor of the decedent~~ within 3 ~~6~~ months after
16 service of a copy ~~the first publication~~ of the notice of
17 administration on the beneficiary or by a creditor within 3
18 months after the first publication of the notice to creditors.

19 Section 28. Subsections (1) and (2) of section
20 732.222, Florida Statutes, are amended to read:

21 732.222 Purchaser for value or lender.--

22 (1) If a surviving spouse has apparent title to
23 property to which ss. 732.216-732.228 apply, a purchaser for
24 value or a lender taking a security interest in the property
25 takes the ~~his or her~~ interest in the property free of any
26 rights of the personal representative or a beneficiary ~~an heir~~
27 ~~or devisee~~ of the decedent.

28 (2) If a personal representative or a beneficiary ~~an~~
29 ~~heir or devisee~~ of the decedent has apparent title to property
30 to which ss. 732.216-732.228 apply, a purchaser for value or a
31 lender taking a security interest in the property takes that

1 ~~his or her~~ interest in the property free of any rights of the
2 surviving spouse.

3 Section 29. Section 732.223, Florida Statutes, is
4 amended to read:

5 732.223 Perfection of title of surviving spouse.--If
6 the title to any property to which ss. 732.216-732.228 apply
7 was held by the decedent at the time of the decedent's ~~his or~~
8 ~~her~~ death, title of the surviving spouse may be perfected by
9 an order of the probate court or by execution of an instrument
10 by the personal representative or the beneficiaries ~~heirs or~~
11 ~~devisees~~ of the decedent with the approval of the probate
12 court. The probate court in which the decedent's estate is
13 being administered has no duty to discover whether property
14 held by the decedent is property to which ss. 732.216-732.228
15 apply. The personal representative has no duty to discover
16 whether property held by the decedent is property to which ss.
17 732.216-732.228 apply unless a written demand is made by the
18 surviving spouse or the spouse's successor in interest within
19 3 6 months after service of a copy of ~~the first publication of~~
20 the notice of administration on the surviving spouse or the
21 spouse's successor in interest.

22 Section 30. Section 732.302, Florida Statutes, is
23 amended to read:

24 732.302 Pretermitted children.--When a testator omits
25 to provide by ~~in his or her~~ will for any of his or her
26 children born or adopted after making the will and the child
27 has not received a part of the testator's property equivalent
28 to a child's part by way of advancement, the child shall
29 receive a share of the estate equal in value to that which the
30 child ~~he or she~~ would have received if the testator had died
31 intestate, unless:

1 (1) It appears from the will that the omission was
2 intentional; or

3 (2) The testator had one or more children when the
4 will was executed and devised substantially all the estate to
5 the other parent of the pretermitted child and that other
6 parent survived the testator and is entitled to take under the
7 will.

8
9 The share of the estate that is assigned to the pretermitted
10 child shall be obtained in accordance with s. 733.805.

11 Section 31. Section 732.401, Florida Statutes, is
12 amended to read:

13 732.401 Descent of homestead.--

14 (1) If not devised as permitted by law and the Florida
15 Constitution, the homestead shall descend in the same manner
16 as other intestate property; but if the decedent is survived
17 by a spouse and lineal descendants, the surviving spouse shall
18 take a life estate in the homestead, with a vested remainder
19 to the lineal descendants in being at the time of the
20 decedent's death per stirpes.

21 (2) Subsection (1) shall not apply to ~~If the decedent~~
22 ~~was domiciled in Florida and resided on real~~ property that the
23 decedent and the surviving spouse owned as tenants by the
24 entirety, ~~the real property shall not be homestead property.~~

25 Section 32. Subsection (2) of section 732.4015,
26 Florida Statutes, is amended to read:

27 732.4015 Devise of homestead.--

28 (2) For the purposes of subsection (1), the term:

29 (a) "Owner" includes the grantor ~~settlor~~ of a trust
30 described in s. 733.707(3) that is evidenced by a written
31 instrument which is in existence at the time of the grantor's

1 ~~settlor's death as if the interest held in trust was owned by~~
2 ~~the grantor pursuant to which the settlor retained the right~~
3 ~~either alone or in conjunction with any other person to amend~~
4 ~~or revoke the trust at any time before his or her death.~~

5 (b) "Devise" includes a disposition by trust of that
6 portion of the trust estate which, if titled in the name of
7 the grantor ~~settlor~~ of the trust, would be the grantor's
8 ~~settlor's~~ homestead.

9 Section 33. Subsections (4) and (6) of section
10 732.402, Florida Statutes, are amended, and subsection (7) is
11 added to said section to read:

12 732.402 Exempt property.--

13 (4) Exempt property shall be in addition to protected
14 homestead, statutory entitlements, and any property passing
15 under to the surviving spouse or heirs of the decedent under
16 ~~s. 4, Art. X of the State Constitution or the decedent's will,~~
17 ~~or by intestate succession, elective share, or family~~
18 ~~allowance.~~

19 (6) Persons entitled to exempt property shall be
20 deemed to have waived their rights under this section unless a
21 petition for determination of exempt property is filed by or
22 on behalf of the persons entitled to the exempt property
23 within 4 months after the date of service ~~the first~~
24 ~~publication~~ of the notice of administration or within 40 days
25 from the date of termination of any proceeding involving the
26 construction, admission to probate, or validity of the will or
27 involving any other matter affecting any part of the estate
28 subject to this section.

29 (7) Property determined as exempt under this section
30 shall be excluded from the value of the estate before
31

1 residuary, intestate, or pretermitted or elective shares are
2 determined.

3 Section 34. Section 732.403, Florida Statutes, is
4 amended to read:

5 732.403 Family allowance.--In addition to protected
6 homestead and statutory entitlements ~~exempt property~~, if the
7 decedent was domiciled in Florida at the time of death, the
8 surviving spouse and the decedent's lineal heirs ~~whom~~ the
9 decedent was supporting or was obligated to support ~~or who~~
10 ~~were in fact being supported by him or her~~ are entitled to a
11 reasonable allowance in money out of the estate for their
12 maintenance during administration. ~~After notice and hearing,~~
13 The court may order this allowance to be paid as a lump sum or
14 in periodic installments. The allowance shall not exceed a
15 total of \$18,000~~\$6,000~~. It shall be paid to the surviving
16 spouse, if living, for the use of the spouse and dependent
17 lineal heirs. If the surviving spouse is not living, it shall
18 be paid to the lineal heirs or to the persons having their
19 care and custody. If any lineal heir is not living with the
20 surviving spouse, the allowance may be made partly to the
21 lineal heir or ~~his or her~~ guardian or other person having the
22 ~~lineal~~ heir's care and custody and partly to the surviving
23 spouse, as the needs of the dependent ~~lineal~~ heir and the
24 surviving spouse appear. ~~The family allowance shall have the~~
25 ~~priority established by s. 733.707.~~ The family allowance is
26 not chargeable against any benefit or share otherwise passing
27 to the surviving spouse or to the dependent lineal heirs ~~by~~
28 ~~intestate succession, elective share, or the will of the~~
29 ~~decedent~~, unless the will otherwise provides. The death of any
30 person entitled to a family allowance terminates the ~~his or~~
31 ~~her~~ right to that ~~the~~ part of the allowance not paid. For

1 purposes of this section, the term "lineal heir" or "lineal
2 heirs" means lineal ascendants and lineal descendants of the
3 decedent.

4 Section 35. Section 732.501, Florida Statutes, is
5 amended to read:

6 732.501 Who may make a will.--Any person who is of
7 sound mind and who is either 18 or more years of age or an
8 emancipated minor ~~18 or more years of age who is of sound mind~~
9 may make a will.

10 Section 36. Paragraph (a) of subsection (1) and
11 subsection (2) of section 732.502, Florida Statutes, are
12 amended to read:

13 732.502 Execution of wills.--Every will must be in
14 writing and executed as follows:

15 (1)(a) Testator's signature.--

- 16 1. The testator must sign the will at the end; or
17 2. The testator's name must be subscribed at the end
18 of the will by some other person in the testator's presence
19 and by the testator's ~~his or her~~ direction.

20 (2) Any will, other than a holographic or nuncupative
21 will, executed by a nonresident of Florida, either before or
22 after this law takes effect, is valid as a will in this state
23 if valid under the laws of the state or country where the will
24 was executed ~~testator was at the time of execution~~. A will in
25 the testator's handwriting that has been executed in
26 accordance with subsection (1) shall not be considered a
27 holographic will.

28 Section 37. Section 732.503, Florida Statutes, is
29 amended to read:

30 732.503 Self-proof of will.--

31

1 732.507 Effect of subsequent marriage, birth, or
2 dissolution of marriage.--

3 (1) Neither subsequent marriage, ~~nor subsequent~~
4 ~~marriage and birth, nor~~ or adoption of lineal descendants
5 shall revoke the prior will of any person, but the
6 pretermitted child or spouse shall inherit as set forth in ss.
7 732.301 and 732.302, regardless of the prior will.

8 (2) Any provision ~~provisions~~ of a will executed by a
9 married person ~~that, which provision~~ affects the spouse of
10 that person, shall become void upon the divorce of that person
11 or upon the dissolution or annulment of the marriage. After
12 the dissolution, divorce, or annulment, the ~~any such~~ will
13 shall be administered and construed as if the former spouse
14 had died at the time of the dissolution, divorce, or annulment
15 of the marriage, unless the will or the dissolution or divorce
16 judgment expressly provides otherwise.

17 Section 40. Paragraph (d) of subsection (2), and
18 subsections (3) and (6) of section 732.513, Florida Statutes,
19 are amended to read:

20 732.513 Devises to trustee.--

21 (2) The devise shall not be invalid for any or all of
22 the following reasons:

23 (d) Because the only res of the trust is the possible
24 expectancy of receiving, as a named beneficiary, a devise
25 under a will or death benefits as described in s. 733.808, and
26 even though the testator or other person has reserved any or
27 all rights of ownership in the ~~such~~ death benefit policy,
28 contract, or plan, including the right to change the
29 beneficiary.

30
31

1 (3) The devise shall dispose of property under the
2 terms of the instrument that created the trust as previously
3 or subsequently ~~theretofore or thereafter~~ amended.

4 ~~(6) This section shall be cumulative to all laws~~
5 ~~touching upon the subject matter.~~

6 Section 41. Section 732.514, Florida Statutes, is
7 amended to read:

8 732.514 Vesting of devises.--The death of the testator
9 is the event that vests the right to devises unless the
10 testator in the ~~his or her~~ will has provided that some other
11 event must happen before a devise vests ~~shall vest~~.

12 Section 42. Section 732.515, Florida Statutes, is
13 amended to read:

14 732.515 Separate writing identifying devises of
15 tangible property.--A ~~will may refer to a~~ written statement or
16 list referred to in the decedent's will shall ~~to~~ dispose of
17 items of tangible personal property, other than property used
18 in trade or business, not otherwise specifically disposed of
19 by the will, ~~other than money and property used in trade or~~
20 ~~business~~. To be admissible under this section as evidence of
21 the intended disposition, the writing must be signed by the
22 testator and must describe the items and the devisees with
23 reasonable certainty. The writing ~~may be referred to as one~~
24 ~~in existence at the time of the testator's death.~~ It may be
25 prepared before or after the execution of the will. It may be
26 altered by the testator after its preparation. It may be a
27 writing that has no significance apart from its effect upon
28 the dispositions made by the will.

29 Section 43. Subsection (1) of section 732.6005,
30 Florida Statutes, is amended to read:

31 732.6005 Rules of construction and intention.--

1 (1) The intention of the testator as expressed in the
2 ~~his or her~~ will controls the legal effect of the testator's
3 dispositions. The rules of construction expressed in this
4 part shall apply unless a contrary intention is indicated by
5 the will.

6 Section 44. Section 732.601, Florida Statutes, is
7 amended to read:

8 732.601 Simultaneous Death Law.--Unless a contrary
9 intention appears in the governing instrument:

10 (1) When title to property or its devolution depends
11 on priority of death and there is insufficient evidence that
12 the persons have died otherwise than simultaneously, the
13 property of each person shall be disposed of as if that person
14 ~~he or she had survived, except as provided otherwise in this~~
15 ~~law.~~

16 (2) When two or more beneficiaries are designated to
17 take successively by reason of survivorship under another
18 person's disposition of property and there is insufficient
19 evidence that the beneficiaries died otherwise than
20 simultaneously, the property thus disposed of shall be divided
21 into as many equal parts as there are successive beneficiaries
22 and the parts shall be distributed to those who would have
23 taken if each designated beneficiary had survived.

24 (3) When there is insufficient evidence that two joint
25 tenants or tenants by the entirety died otherwise than
26 simultaneously, the property so held shall be distributed
27 one-half as if one had survived and one-half as if the other
28 had survived. If there are more than two joint tenants and all
29 of them so died, the property thus distributed shall be in the
30 proportion that one bears to the ~~whole~~ number of joint
31 tenants.

1 (4) When the insured and the beneficiary in a policy
2 of life or accident insurance have died and there is
3 insufficient evidence that they died otherwise than
4 simultaneously, the proceeds of the policy shall be
5 distributed as if the insured had survived the beneficiary.

6 ~~(5) This law shall not apply in the case of wills,~~
7 ~~living trusts, deeds, or contracts of insurance in which~~
8 ~~provision has been made for distribution of property different~~
9 ~~from the provisions of this law.~~

10 Section 45. Section 732.603, Florida Statutes, is
11 amended to read:

12 732.603 Antilapse; deceased devisee; class
13 gifts.--Unless a contrary intention appears in the will:

14 (1) If a devisee or a beneficiary of a trust created
15 by a will who is a grandparent, or a lineal descendant of a
16 grandparent, of the testator:

17 (a) Is dead at the time of the execution of the will
18 or at the termination of a trust interest created by a will,

19 (b) Fails to survive the testator, or

20 (c) Is required by the will to be treated as having if
21 ~~he or she~~ predeceased the testator,

22
23 then the descendants of the devisee or beneficiary take per
24 stirpes in place of the deceased devisee or beneficiary. A
25 person who would have been a devisee under a class gift if
26 that person ~~he or she~~ had survived the testator shall be a
27 devisee for purposes of this section whether that person died
28 ~~his or her death occurred~~ before or after the execution of the
29 will.

30
31

1 (2) If a devisee or a beneficiary of a trust created
2 by a will who is not a grandparent, or a descendant of a
3 grandparent, of the testator:

4 (a) Is dead at the time of the execution of the will
5 or at the termination of a trust interest created in a will,

6 (b) Fails to survive the testator, or

7 (c) Is required by the will to be treated as having if
8 ~~he or she~~ predeceased the testator,

9
10 then the testamentary disposition to the devisee or
11 beneficiary shall lapse unless an intention to substitute
12 another ~~in his or her place~~ appears in the will.

13 Section 46. Subsection (2) of section 732.604, Florida
14 Statutes, is amended to read:

15 732.604 Failure of testamentary provision.--

16 (2) Except as provided in s. 732.603, if the residue
17 is devised to two or more persons and the devise to ~~share of~~
18 one of the residuary devisees fails for any reason, that
19 devise ~~his or her share~~ passes to the other residuary devisee,
20 or to the other residuary devisees in proportion to their
21 interests in the residue.

22 Section 47. Section 732.605, Florida Statutes, is
23 amended to read:

24 732.605 Change in securities; accessions;
25 nonademption.--

26 (1) If the testator intended a specific devise of
27 certain securities rather than their equivalent value, the
28 specific devisee is entitled only to:

29 (a) As much of the devised securities as is a part of
30 the estate at the time of the testator's death.

31

1 (b) Any additional or other securities of the same
2 entity owned by the testator because of action initiated by
3 the entity, excluding any acquired by exercise of purchase
4 options.

5 (c) Securities of another entity owned by the testator
6 as a result of a merger, consolidation, reorganization, or
7 other similar action initiated by the entity.

8 (d) Securities of the same entity acquired as a result
9 of a plan of reinvestment.

10 (2) Distributions before death with respect to ~~of~~ a
11 specifically devised security, whether in cash or otherwise,
12 which are not provided for in subsection (1) are not part of
13 the specific devise.

14 Section 48. Subsection (1) and paragraph (d) of
15 subsection (2) of section 732.606, Florida Statutes, are
16 amended to read:

17 732.606 Nonademption of specific devises in certain
18 cases; sale by guardian of the property; unpaid proceeds of
19 sale, condemnation, or insurance.--

20 (1) If specifically devised property is sold by a
21 guardian of the property ~~for the care and maintenance of the~~
22 ~~ward~~ or if a condemnation award or insurance proceeds are paid
23 to a guardian of the property ~~as a result of condemnation,~~
24 ~~fire, or casualty,~~ the specific devisee has the right to a
25 general pecuniary devise equal to the net sale price, the
26 condemnation award, or the insurance proceeds. This
27 subsection does not apply if, subsequent to the sale,
28 condemnation, or casualty, it is adjudicated that the
29 disability of the testator has ceased and the testator
30 survives the adjudication by 1 year. The right of the specific
31

1 devisee under this subsection is reduced by any right
2 described in he or she has under subsection (2).

3 (2) A specific devisee has the right to the remaining
4 specifically devised property and:

5 (d) Property owned by the testator at ~~his or her~~ death
6 as a result of foreclosure, or obtained instead of
7 foreclosure, of the security for the specifically devised
8 obligation.

9 Section 49. Subsection (1) of section 732.701, Florida
10 Statutes, is amended to read:

11 732.701 Agreements concerning succession.--

12 (1) No agreement to make a will, to give a devise, not
13 to revoke a will, not to revoke a devise, not to make a will,
14 or not to make a devise shall be binding or enforceable unless
15 the agreement is in writing and signed by the agreeing party
16 in the presence of two attesting witnesses. Such an agreement
17 executed by a nonresident of Florida, either before or after
18 this law takes effect, is valid in this state if valid when
19 executed under the laws of the state or country where the
20 agreement was executed, whether or not the agreeing party is a
21 Florida resident at the time of death.

22 Section 50. Section 732.702, Florida Statutes, is
23 amended to read:

24 732.702 Waiver of spousal ~~right to elect and of other~~
25 rights.--

26 (1) The rights ~~right of election~~ of a surviving
27 spouse, ~~the rights of the surviving spouse as intestate~~
28 ~~successor or as a pretermitted spouse, and the rights of the~~
29 ~~surviving spouse~~ to an elective share, intestate share,
30 pretermitted share, homestead, exempt property, ~~and~~ family
31 allowance, and preference in appointment as personal

1 representative of an intestate estate or any of those rights
2 ~~them~~, may be waived, wholly or partly, before or after
3 marriage, by a written contract, agreement, or waiver, signed
4 by the waiving party in the presence of two subscribing
5 witnesses. The requirement of witnesses shall be applicable
6 only to contracts, agreements, or waivers signed by Florida
7 residents after the effective date of this law. Any contract,
8 agreement, or waiver executed by a nonresident of Florida,
9 either before or after this law takes effect, is valid in this
10 state if valid when executed under the laws of the state or
11 country where it was executed, whether or not he or she is a
12 Florida resident at the time of death. Unless the waiver it
13 provides to the contrary, a waiver of "all rights," or
14 equivalent language, in the property or estate of a present or
15 prospective spouse, or a complete property settlement entered
16 into after, or in anticipation of, separation, dissolution of
17 marriage, or divorce, is a waiver of all rights to elective
18 share, intestate share, pretermitted share, homestead
19 property, exempt property, and family allowance, and
20 preference in appointment as personal representative of an
21 intestate estate, by the waiving party ~~each spouse~~ in the
22 property of the other and a renunciation by the waiving party
23 ~~each~~ of all benefits that would otherwise pass to the waiving
24 party either from the other by intestate succession or by the
25 provisions of any will executed before the written contract,
26 agreement, or waiver or ~~property settlement.~~

27 (2) Each spouse shall make a fair disclosure to the
28 other of that spouse's ~~his or her~~ estate if the agreement,
29 contract, or waiver is executed after marriage. No disclosure
30 shall be required for an agreement, contract, or waiver
31 executed before marriage.

1 (3) No consideration other than the execution of the
2 agreement, contract, or waiver shall be necessary to its
3 validity, whether executed before or after marriage.

4 Section 51. Subsections (2), (3), (4), (5), (6), and
5 (7) of section 732.801, Florida Statutes, are amended to read:

6 732.801 Disclaimer of interests in property passing by
7 will or intestate succession or under certain powers of
8 appointment.--

9 (2) SCOPE OF RIGHT TO DISCLAIM.--

10 (a) A beneficiary may disclaim ~~his or her~~ succession
11 to any interest in property that, unless disclaimed, would
12 pass to the beneficiary:

13 1. By intestate succession or devise.

14 2. Under descent of homestead, exempt property, or
15 family allowance or under s. 222.13.

16 3. Through exercise or nonexercise of a power of
17 appointment exercisable by will.

18 4. Through testamentary exercise or nonexercise of a
19 power of appointment exercisable by either deed or will.

20 5. As beneficiary of a testamentary trust.

21 6. As a beneficiary of a testamentary gift to any
22 nontestamentary trust.

23 7. As donee of a power of appointment created by will.

24 8. By succession in any manner described in this
25 subsection to a disclaimed interest.

26 9. In any manner not specifically enumerated herein
27 under a testamentary instrument.

28 (b) Disclaimer may be made for a minor, incompetent,
29 incapacitated person, or deceased beneficiary by the guardian
30 or personal representative if the court having jurisdiction of
31

1 the estate of the minor, incompetent, incapacitated person, or
2 deceased beneficiary upon petition finds that the disclaimer:

3 1. Is in the best interests of those interested in the
4 estate of the beneficiary and of those who take the
5 beneficiary's interest by virtue of the disclaimer and

6 2. Is not detrimental to the best interests of the
7 beneficiary.

8
9 ~~The determination shall be made on a petition filed for that~~
10 ~~purpose and served on all interested persons.~~ If ordered by
11 the court, the guardian or personal representative shall
12 execute and record the disclaimer on behalf of the beneficiary
13 within the time and in the manner in which the beneficiary
14 could disclaim if ~~he or she were~~ living, of legal age, and
15 competent.

16 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

17 (a) Unless the decedent or a donee of a power of
18 appointment has otherwise provided by will or other
19 appropriate instrument with reference to the possibility of a
20 disclaimer by the beneficiary, the interest disclaimed shall
21 descend, be distributed, or otherwise be disposed of in the
22 same manner as if the disclaimant had died immediately
23 preceding the death or other event that caused ~~him or her to~~
24 ~~become finally ascertained as a beneficiary and the~~
25 disclaimant's interest to become indefeasibly fixed both in
26 quality and quantity. The disclaimer shall relate to that
27 date for all purposes, whether recorded before or after the
28 death or other event. An interest in property disclaimed
29 shall never vest in the disclaimant. If the provisions of s.
30 732.603 would have been applicable had the disclaimant in fact

31

1 died immediately preceding the death or other event, they
2 shall be applicable to the disclaimed interest.

3 (b) Unless the ~~his or her~~ disclaimer instrument so
4 provides, a beneficiary who disclaims any interest ~~that would~~
5 ~~pass to him or her~~ in any manner described in subsection (2)
6 shall not be excluded from sharing in any other interest ~~to~~
7 ~~which he or she may be entitled in any manner described in the~~
8 ~~subsection, including subparagraph (2)(a)8.~~, even though the
9 interest includes disclaimed assets by virtue of the
10 beneficiary's disclaimer.

11 (4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER
12 INSTRUMENTS.--

13 (a) ~~To be~~ A disclaimer shall be in, a writing and
14 shall declare the disclaimer and its extent, describe the
15 interest in property disclaimed, and be executed signed,
16 ~~witnessed,~~ and acknowledged in the manner provided for the
17 conveyance of real property.

18 (b) A disclaimer shall be effective and irrevocable
19 when the instrument is recorded by the clerk where the estate
20 of the decedent is or has been administered. If no
21 administration has been commenced, it may be recorded
22 ~~recording may be made~~ with the clerk of any county where venue
23 of administration is proper.

24 (c) The person disclaiming shall deliver or mail a
25 copy of the disclaimer instrument to the personal
26 representative, trustee, or other person having legal title
27 to, or possession of, the property in which the disclaimed
28 interest exists. No representative, trustee, or other person
29 shall be liable for any otherwise proper distribution or other
30 disposition made without actual notice of the disclaimer or,
31 if the disclaimer is waived or barred ~~as hereinafter provided,~~

1 for any otherwise proper distribution or other disposition
2 made in reliance on the disclaimer, if the distribution or
3 disposition is made without actual notice of the facts
4 constituting the waiver or bar of ~~barring~~ the right to
5 disclaim.

6 (5) TIME FOR RECORDING DISCLAIMER.--To be effective a
7 disclaimer shall be recorded at any time after the creation of
8 the interest, but in any event within 9 months after the event
9 giving rise to the right to disclaim, including the death of
10 the decedent; or, if the disclaimant is not finally
11 ascertained as a beneficiary or the disclaimant's interest has
12 not become indefeasibly fixed both in quality and quantity at
13 the death of the decedent, then the disclaimer shall be
14 recorded not later than 6 months after the event that would
15 cause the ~~him or her to become finally ascertained and his or~~
16 ~~her~~ interest to become indefeasibly fixed both in quality and
17 quantity. However, a disclaimer may be effective if recorded
18 at any time after the creation of the interest, upon the
19 written consent of all interested parties as provided in s.
20 731.302.

21 (6) WAIVER OR BAR TO RIGHT TO DISCLAIM.--

22 (a) The right to disclaim otherwise conferred by this
23 section shall be barred if the disclaimant ~~beneficiary~~ is
24 insolvent at the time of recording the disclaimer ~~the event~~
25 ~~giving rise to the right to disclaim~~ and also by:

26 1. Making a voluntary assignment or transfer of, a
27 contract to assign or transfer, or an encumbrance of, an
28 interest in real or personal property.

29 2. Giving a written waiver of the right to disclaim
30 the succession to an interest in real or personal property.

31

1 3. Making any sale or other disposition of an interest
2 in real or personal property pursuant to judicial process by
3 the beneficiary before recording ~~he or she has recorded~~ a
4 disclaimer.

5 (b) The acceptance, assignment, transfer, encumbrance,
6 or written waiver of the right to disclaim a part of an
7 interest in property, or the sale pursuant to judicial process
8 of a part of an interest in property, shall not bar the right
9 to disclaim any other part of the interest in property.

10 (7) EFFECT OF RESTRAINTS.--The right to disclaim
11 granted by this section is ~~shall exist~~ irrespective of any
12 limitation imposed on the interest of the disclaimant in the
13 nature of an express or implied spendthrift provision or
14 similar restriction.

15 Section 52. Section 732.804, Florida Statutes, is
16 amended to read:

17 732.804 Provisions relating to disposition of the body
18 cremation.--Before issuance of letters, any person may carry
19 out written instructions of the decedent relating to the
20 decedent's body and funeral and burial arrangements.The fact
21 that cremation occurred pursuant to a written direction
22 ~~provision of a will or any written contract~~ signed by the
23 decedent that the ~~in which he or she expressed the intent that~~
24 ~~his or her~~ body be cremated is a complete defense to a cause
25 of action against any person acting or relying on that
26 direction ~~the personal representative or person providing the~~
27 ~~services.~~

28 Section 53. Section 732.901, Florida Statutes, is
29 amended to read:

30 732.901 Production of wills.--

31

1 (1) The custodian of a will must deposit the will with
2 the clerk of the court having venue of the estate of the
3 decedent within 10 days after receiving information that the
4 testator is dead. The custodian must supply the testator's
5 date of death or social security number to the clerk upon
6 deposit. ~~Willful failure to deposit the will with the clerk
7 within the time period specified shall render the custodian
8 responsible for all costs and damages sustained by anyone if
9 the court finds that the custodian had no just or reasonable
10 cause for withholding the deposit of the will.~~

11 (2) Upon ~~By~~ petition and notice ~~of it served on him or~~
12 ~~her~~, the custodian of any will may be compelled to produce and
13 deposit the will as provided in subsection (1). All costs,
14 damages, and a reasonable attorney's fee shall be adjudged to
15 petitioner against the delinquent custodian if the court finds
16 that the custodian had no just or reasonable cause for failing
17 to withholding the deposit of the will.

18 Section 54. Section 732.910, Florida Statutes, is
19 transferred and renumbered as section 765.510, Florida
20 Statutes.

21 Section 55. Section 732.911, Florida Statutes, is
22 transferred and renumbered as section 765.511, Florida
23 Statutes.

24 Section 56. Section 732.912, Florida Statutes, is
25 transferred and renumbered as section 765.512, Florida
26 Statutes.

27 Section 57. Section 732.913, Florida Statutes, is
28 transferred and renumbered as section 765.513, Florida
29 Statutes.

30
31

- 1 Section 58. Section 732.914, Florida Statutes, is
2 transferred and renumbered as section 765.514, Florida
3 Statutes.
- 4 Section 59. Section 732.915, Florida Statutes, is
5 transferred and renumbered as section 765.515, Florida
6 Statutes.
- 7 Section 60. Section 732.916, Florida Statutes, is
8 transferred and renumbered as section 765.516, Florida
9 Statutes.
- 10 Section 61. Section 732.917, Florida Statutes, is
11 transferred and renumbered as section 765.517, Florida
12 Statutes.
- 13 Section 62. Section 732.918, Florida Statutes, is
14 transferred and renumbered as section 765.518, Florida
15 Statutes.
- 16 Section 63. Section 732.9185, Florida Statutes, is
17 transferred and renumbered as section 765.5185, Florida
18 Statutes.
- 19 Section 64. Section 732.919, Florida Statutes, is
20 transferred and renumbered as section 765.519, Florida
21 Statutes.
- 22 Section 65. Section 732.921, Florida Statutes, is
23 transferred and renumbered as section 765.521, Florida
24 Statutes.
- 25 Section 66. Section 732.9215, Florida Statutes, is
26 transferred and renumbered as section 765.5215, Florida
27 Statutes.
- 28 Section 67. Section 732.92155, Florida Statutes, is
29 transferred and renumbered as section 765.52155, Florida
30 Statutes.
- 31

1 Section 68. Section 732.9216, Florida Statutes, is
2 transferred and renumbered as section 765.5216, Florida
3 Statutes.

4 Section 69. Section 732.922, Florida Statutes, is
5 transferred and renumbered as section 765.522, Florida
6 Statutes.

7 Section 70. Section 733.101, Florida Statutes, is
8 amended to read:

9 733.101 Venue of probate proceedings.--

10 (1) The venue for ~~of~~ probate of ~~all~~ wills and granting
11 ~~of~~ letters shall be:

12 (a) In the county in this state where the decedent was
13 domiciled ~~had his or her domicile.~~

14 (b) If the decedent had no domicile in this state,
15 then in any county where the decedent's ~~decedent was possessed~~
16 ~~of any property~~ is located.

17 (c) If the decedent had no domicile in this state and
18 possessed no property in this state, then in the county where
19 any debtor of the decedent resides.

20 (2) For the purpose of this section, a married woman
21 whose husband is an alien or a nonresident of Florida may
22 establish or designate a separate domicile in this state.

23 (3) Whenever a ~~When any~~ proceeding is filed laying
24 venue in an improper ~~the wrong~~ county, the court may transfer
25 the action in the same manner as provided in the Florida Rules
26 of Civil Procedure. Any action taken by the court or the
27 parties before the transfer is not affected by ~~because of~~ the
28 improper venue.

29 Section 71. Subsection (2) of section 733.103, Florida
30 Statutes, is amended to read:

31 733.103 Effect of probate.--

1 (2) In any collateral action or proceeding relating to
2 devised property, the probate of a will in Florida shall be
3 conclusive of its due execution; that it was executed by a
4 competent testator, free of fraud, duress, mistake, and undue
5 influence; and ~~of the fact that the will was unrevoked on the~~
6 testator's death.

7 Section 72. Section 733.104, Florida Statutes, is
8 amended to read:

9 733.104 Suspension of statutes of limitation in favor
10 of the personal representative.--

11 (1) If a person entitled to bring an action dies
12 before the expiration of the time limited for the commencement
13 of the action and the cause of action survives, the action may
14 be commenced by that person's ~~his or her~~ personal
15 representative before the later of the expiration of the
16 statute or 12 months after the ~~expiration and within 12 months~~
17 ~~from the date of the~~ decedent's death.

18 (2) If a person against whom a cause of action exists
19 dies before the expiration of the time limited for
20 commencement of the action and the cause of action survives,
21 if a claim is timely filed ~~shall be filed on the cause of~~
22 ~~action, and it shall then proceed as other claims against the~~
23 ~~estate, notwithstanding the expiration of the time limited for~~
24 commencement of the action shall not apply.

25 Section 73. Section 733.105, Florida Statutes, is
26 amended to read:

27 733.105 Determination of beneficiaries.--

28 (1) When property passes by intestate succession or
29 ~~under a will to a person not sufficiently identified in the~~
30 will is unclear and there is ~~the personal representative is in~~
31 doubt about:

1 (a) Who is entitled to receive any part of the
2 property it or part of it, or
3 (b) The shares and amounts that any person is entitled
4 to receive,
5
6 any interested person the personal representative may petition
7 the court to determine beneficiaries or their shares ~~file a~~
8 ~~petition setting forth the names, residences, and post office~~
9 ~~addresses of all persons in interest, except creditors of the~~
10 ~~decedent, so far as known or ascertainable by diligent search~~
11 ~~and inquiry, and the nature of their respective interests,~~
12 ~~designating those who are believed by the personal~~
13 ~~representative to be minors or incompetents and stating~~
14 ~~whether those so designated are under legal guardianship in~~
15 ~~this state. If the personal representative believes that~~
16 ~~there are, or may be, persons whose names are not known to him~~
17 ~~or her who have claims against, or interest in, the estate as~~
18 ~~heirs or devisees, the petition shall so state.~~
19 (2) ~~After formal notice and hearing, the court shall~~
20 ~~enter an order determining the heirs or devisees or the shares~~
21 ~~and amounts they are entitled to receive, or both. Any~~
22 ~~personal representative who makes distribution or takes any~~
23 ~~other action pursuant to an the order determining~~
24 beneficiaries shall be fully protected.
25 (3) ~~When it is necessary to determine who are or were~~
26 ~~the heirs or devisees, the court may make a determination, on~~
27 ~~the petition of any interested person, in like proceedings and~~
28 ~~after formal notice, irrespective of whether the estate of the~~
29 ~~deceased person is administered or, if administered, whether~~
30 ~~the administration of the estate has been closed or the~~
31 ~~personal representative discharged. A separate civil action~~

1 to determine beneficiaries may be brought ~~under this~~
2 ~~subsection~~ when an estate has not been ~~is not being~~
3 administered.

4 Section 74. Subsections (2), (3), and (4) of section
5 733.106, Florida Statutes, are amended to read:

6 733.106 Costs and attorney's attorney fees.--

7 (2) A person nominated as personal representative ~~of~~
8 ~~the last known will~~, or any proponent of a ~~the~~ will if the
9 person so nominated does not act within a reasonable time, if
10 in good faith justified in offering the will in due form for
11 probate, shall receive ~~his or her~~ costs and attorney's
12 attorney fees ~~from out of~~ the estate even though probate is
13 denied or revoked ~~he or she is unsuccessful~~.

14 (3) Any attorney who has rendered services to an
15 estate is entitled to compensation from an estate ~~may apply~~
16 ~~for an order awarding attorney fees, and after informal notice~~
17 ~~to the personal representative and all persons bearing the~~
18 ~~impact of the payment the court shall enter its order on the~~
19 ~~petition.~~

20 (4) When costs and attorney's attorney fees are to be
21 paid from ~~out of~~ the estate, the court may, ~~in its discretion,~~
22 direct from what part of the estate they shall be paid.

23 Section 75. Section 733.107, Florida Statutes, is
24 amended to read:

25 733.107 Burden of proof in contests.--In all
26 proceedings contesting the validity of a will, the burden
27 shall be upon the proponent of the will to establish prima
28 facie its formal execution and attestation. Thereafter, the
29 contestant shall have the burden of establishing the grounds
30 on which the probate of the will is opposed or revocation is
31 sought.

1 Section 76. Section 733.109, Florida Statutes, is
2 amended to read:

3 733.109 Revocation of probate.--

4 (1) A proceeding to revoke the probate of a will shall
5 be brought in the court having jurisdiction over the
6 administration.Any interested person, including a beneficiary
7 under a prior will, unless ~~except those~~ barred under s.
8 733.212 or s. 733.2123, may commence the proceeding, before
9 final discharge of the personal representative, ~~petition the~~
10 ~~court in which the will was admitted to probate for revocation~~
11 ~~of probate.~~

12 ~~(a) The petition shall state the interest of the~~
13 ~~petitioner and the grounds for revocation.~~

14 ~~(b) The petition shall be served upon the personal~~
15 ~~representative and all interested persons by formal notice,~~
16 ~~and thereafter proceedings shall be conducted as an adversary~~
17 ~~proceeding under the rules of civil procedure.~~

18 (2) Pending the determination of any petition for
19 revocation of probate, the personal representative shall
20 proceed with the administration of the estate as if no
21 revocation proceeding had been commenced, except that no
22 distribution may be made to beneficiaries ~~devisees~~ in
23 contravention of the rights of those who, but for the will,
24 would be entitled to the property disposed of.

25 (3) Revocation of probate of a will shall not affect
26 or impair the title to ~~the~~ property ~~theretofore~~ purchased in
27 good faith for value from the personal representative prior to
28 an order of revocation.

29 Section 77. Subsection (3) of section 733.201, Florida
30 Statutes, is amended to read:

31 733.201 Proof of wills.--

1 (3) If it appears to the court that the attesting
2 witnesses cannot be found or that they have become incompetent
3 after the execution of the will or their testimony cannot be
4 obtained within a reasonable time, a will may be admitted to
5 probate upon the oath of the personal representative nominated
6 by the will as provided in subsection (2), whether or not the
7 nominated personal representative ~~he or she~~ is interested in
8 the estate, or upon the oath of any person having no interest
9 in the estate under the will ~~stating~~, that the person ~~he or~~
10 ~~she~~ believes the writing exhibited to be the true last will of
11 the decedent.

12 Section 78. Section 733.202, Florida Statutes, is
13 amended to read:

14 733.202 Petition.--Any interested person may petition
15 for administration.

16 ~~(1) A verified petition for administration may be~~
17 ~~filed by any interested person.~~

18 ~~(2) The petition for administration shall contain:~~

19 ~~(a) A statement of the interest of the petitioner, the~~
20 ~~petitioner's name and address, and the name and office address~~
21 ~~of his or her attorney.~~

22 ~~(b) The name, last known address, social security~~
23 ~~number, and date and place of death of the decedent and the~~
24 ~~state and county of the decedent's domicile.~~

25 ~~(c) So far as is known, the names and addresses of the~~
26 ~~beneficiaries and the dates of birth of any who are minors.~~

27 ~~(d) A statement showing venue.~~

28 ~~(e) The priority under part III of the person whose~~
29 ~~appointment as the personal representative is sought.~~

30 ~~(f) A statement of the approximate value and nature of~~
31 ~~the assets so the clerk can ascertain the amount of the filing~~

1 ~~fee and the court can determine the amount of any bond~~
2 ~~authorized by this code.~~

3 ~~(3) If the decedent was a nonresident of this state,~~
4 ~~the petition shall state whether domiciliary proceedings are~~
5 ~~pending in another state or country, if known, and, if so, the~~
6 ~~name and address of the foreign personal representative and~~
7 ~~the court issuing letters.~~

8 ~~(4) In an intestate estate, the petition shall:~~

9 ~~(a) State that after the exercise of reasonable~~
10 ~~diligence the petitioner is unaware of any unrevoked wills or~~
11 ~~codicils or, if the petitioner is aware of any unrevoked wills~~
12 ~~or codicils, why the wills or codicils are not being probated,~~
13 ~~or~~

14 ~~(b) Otherwise give the facts concerning the will or~~
15 ~~codicil.~~

16 ~~(5) In a testate estate, the petition shall:~~

17 ~~(a) Identify all unrevoked wills and codicils being~~
18 ~~presented for probate.~~

19 ~~(b) State that the petitioner is unaware of any other~~
20 ~~unrevoked will or codicil or, if the petitioner is aware of~~
21 ~~any other unrevoked will or codicil, why the other will or~~
22 ~~codicil is not being probated.~~

23 ~~(c) State that the original of the decedent's last~~
24 ~~will is in the possession of the court or accompanies the~~
25 ~~petition or that an authenticated copy of a will probated in~~
26 ~~another jurisdiction accompanies the petition.~~

27 Section 79. Section 733.203, Florida Statutes, is
28 repealed:

29 ~~733.203 Notice; when required.~~

30
31

1 ~~(1) If a caveat has been filed by an heir or a devisee~~
2 ~~under a will other than that being offered for probate, the~~
3 ~~procedure provided for in s. 733.2123 shall be followed.~~

4 ~~(2) Except as may otherwise be provided in this part,~~
5 ~~no notice need be given of the petition for administration or~~
6 ~~of the order granting letters when it appears that the~~
7 ~~petitioner is entitled to preference of appointment. Before~~
8 ~~letters shall be granted to any person who is not entitled to~~
9 ~~preference, formal notice shall be served on all known persons~~
10 ~~qualified to act as personal representative and entitled to~~
11 ~~preference equal to or greater than the applicant, unless~~
12 ~~those entitled to preference waive it in writing.~~

13 Section 80. Subsection (2) of section 733.204, Florida
14 Statutes, is amended to read:

15 733.204 Probate of a will written in a foreign
16 language.--

17 ~~(2) In admitting the will to probate, the court shall~~
18 ~~establish its correct English translation. If the original~~
19 ~~will is not or cannot be filed, a photographic copy of the~~
20 ~~original will shall be filed. At any time during the~~
21 ~~administration any interested person may have the correctness~~
22 ~~of the translation, or any part, redetermined after formal~~
23 ~~notice to all other interested persons. No personal~~
24 ~~representative who complies in good faith with the English~~
25 ~~translation of the will as may then be established by the~~
26 ~~court shall thereafter be held liable for doing as a result of~~
27 ~~having done so.~~

28 Section 81. Section 733.205, Florida Statutes, is
29 amended to read:

30 733.205 Probate of notarial will.--

31

1 (1) When a copy of a notarial will in the possession
2 of a notary entitled to its custody in a foreign state or
3 country, the laws of which state or country require that the
4 will remain in the custody of the ~~such~~ notary, duly
5 authenticated by the notary, whose official position,
6 signature, and seal of office are further authenticated by an
7 American consul, vice consul, or other American consular
8 officer within whose jurisdiction the notary is a resident, is
9 presented to the court, it may be admitted to probate if the
10 original could have been admitted to probate in this state.

11 (2) The duly authenticated copy shall be prima facie
12 evidence of its purported execution and of the facts stated in
13 the certificate in compliance with subsection (1).

14 (3) Any interested person ~~notified~~ may oppose the
15 probate of such a notarial will or may petition for revocation
16 of probate of such a notarial will, as in the ~~case of~~ original
17 probate of a will in this state.

18 Section 82. Subsection (3) of section 733.206, Florida
19 Statutes, is amended to read:

20 733.206 Probate of will of resident after foreign
21 probate.--

22 (3) Any interested person may oppose the probate of
23 the will, or may petition for revocation of the probate of the
24 will, as in ~~the case of~~ the original probate of a will in this
25 state.

26 Section 83. Section 733.207, Florida Statutes, is
27 amended to read:

28 733.207 Establishment and probate of lost or destroyed
29 will.--Any interested person may establish the full and
30 precise terms of a lost or destroyed will and offer the will
31 for probate.

1 ~~(1) The establishment and probate of a lost or~~
2 ~~destroyed will shall be in one proceeding. The court shall~~
3 ~~recite, and thereby establish and preserve, the full and~~
4 ~~precise terms and provisions of the will in the order~~
5 ~~admitting it to probate.~~

6 ~~(2) The petition for probate of a lost or destroyed~~
7 ~~will shall contain a copy of the will or its substance. The~~
8 ~~testimony of each witness must be reduced to writing and filed~~
9 ~~and shall be evidence in any contest of the will if the~~
10 ~~witness has died or moved from the state.~~

11 ~~(3) No lost or destroyed will shall be admitted to~~
12 ~~probate unless formal notice has been given to those who, but~~
13 ~~for the will, would be entitled to the property thereby~~
14 ~~devised. The specific content of the will must be clearly and~~
15 ~~distinctly proved by the testimony of two disinterested~~
16 ~~witnesses, or, if a correct copy is provided, it shall be~~
17 ~~proved by one disinterested witness.~~

18 Section 84. Section 733.208, Florida Statutes, is
19 amended to read:

20 733.208 Discovery of later will.--On the discovery of
21 a later will or codicil ~~expressly or impliedly revoking the~~
22 ~~probated will in whole or in part, pending or during~~
23 ~~administration, any interested person may petition to revoke~~
24 ~~the probate of the earlier will or to probate the later will~~
25 ~~or codicil offer the later will for probate. The proceedings~~
26 ~~shall be similar to those for revocation of probate. No later~~
27 ~~will or codicil may be offered after the testate or intestate~~
28 ~~estate has been completely administered and the personal~~
29 ~~representative discharged closing of the estate.~~

30 Section 85. Section 733.209, Florida Statutes, is
31 amended to read:

1 733.209 Estates of missing persons.--Any interested
2 person may petition to administer the estate of a missing
3 person; however, no personal representative shall be appointed
4 until the court determines the missing person is dead.~~The~~
5 ~~estates of missing persons shall be administered in the same~~
6 ~~manner as other estates. A petition for administration of the~~
7 ~~estate shall request entry of an order declaring the death of~~
8 ~~a missing person prior to appointing a personal representative~~
9 ~~and commencing administration.~~

10 Section 86. Section 733.212, Florida Statutes, is
11 amended to read:

12 733.212 Notice of administration; filing of objections
13 ~~and claims.--~~

14 ~~(1) The personal representative shall promptly publish~~
15 ~~a notice of administration. The notice shall contain the name~~
16 ~~of the decedent, the file number of the estate, the~~
17 ~~designation and address of the court in which the proceedings~~
18 ~~are pending, the name and address of the personal~~
19 ~~representative, and the name and address of the personal~~
20 ~~representative's attorney and state the date of first~~
21 ~~publication. The notice shall require all interested persons~~
22 ~~to file with the court:~~

23 ~~(a) All claims against the estate within the time~~
24 ~~periods set forth in s. 733.702, or be forever barred.~~

25 ~~(b) Any objection by an interested person on whom~~
26 ~~notice was served that challenges the validity of the will,~~
27 ~~the qualifications of the personal representative, venue, or~~
28 ~~jurisdiction of the court within the later of 3 months after~~
29 ~~the date of the first publication of the notice or 30 days~~
30 ~~after the date of service of a copy of the notice on the~~
31 ~~objecting person.~~

1 ~~(2) Publication shall be once a week for 2 consecutive~~
2 ~~weeks, two publications being sufficient, in a newspaper~~
3 ~~published in the county where the estate is administered or,~~
4 ~~if there is no newspaper published in the county, in a~~
5 ~~newspaper of general circulation in that county.~~

6 (1)(3) The personal representative shall promptly
7 serve a copy of the notice of administration on the following
8 persons who are known to the personal representative:

9 (a) The decedent's surviving spouse;

10 (b) Beneficiaries; ~~and~~

11 (c) The trustee of any trust described in s.
12 733.707(3); and, of which the decedent was grantor

13 (d) Persons who may be entitled to exempt property
14

15 in the manner provided for service of formal notice, unless
16 served under s. 733.2123. The personal representative may
17 similarly serve a copy of the notice on any devisees under a
18 known prior will or heirs or others who claim or may claim an
19 interest in the estate.

20 (2) The notice shall state the name of the decedent,
21 the file number of the estate, the designation and address of
22 the court in which the proceedings are pending, whether the
23 estate is testate or intestate, and, if testate, the date of
24 the will and any codicils, the name and address of the
25 personal representative, and the name and address of the
26 personal representative's attorney. The notice shall state
27 that interested persons are required to file with the court
28 any objection by an interested person on whom the notice was
29 served that challenges the validity of the will, the
30 qualifications of the personal representative, venue, or
31 jurisdiction of the court within 3 months after the date of

1 service of a copy of the notice of administration on the
2 objecting person.

3 (3) Any interested person on whom a copy of the notice
4 of administration was served must object to the validity of
5 the will, the qualifications of the personal representative,
6 venue, or jurisdiction of the court by filing a petition or
7 other pleading requesting relief in accordance with the
8 Florida Probate Rules within 3 months after the date of
9 service of a copy of the notice of administration on the
10 objecting person or those objections are forever barred. The
11 appointment of a personal representative or a successor
12 personal representative shall not extend or renew the period
13 for filing objections under this section, unless a new will or
14 codicil is admitted.

15 ~~(4)(a) The personal representative shall promptly make~~
16 ~~a diligent search to determine the names and addresses of~~
17 ~~creditors of the decedent who are reasonably ascertainable and~~
18 ~~shall serve on those creditors a copy of the notice within 3~~
19 ~~months after the first publication of the notice. Under s.~~
20 ~~409.9101, the Agency for Health Care Administration is~~
21 ~~considered a reasonably ascertainable creditor in instances~~
22 ~~where the decedent had received Medicaid assistance for~~
23 ~~medical care after reaching 55 years of age. Impracticable and~~
24 ~~extended searches are not required. Service is not required~~
25 ~~on any creditor who has filed a claim as provided in this~~
26 ~~part; a creditor whose claim has been paid in full; or a~~
27 ~~creditor whose claim is listed in a personal representative's~~
28 ~~timely proof of claim if the personal representative notified~~
29 ~~the creditor of that listing.~~

30 (4)(b) The personal representative is not individually
31 liable to any person for giving notice under this section

1 ~~subsection~~, regardless of whether it is later determined that
2 ~~such~~ notice was not required by this section. The service of
3 notice in accordance with this section ~~subsection~~ shall not be
4 construed as conferring any right ~~admitting the validity or~~
5 ~~enforceability of a claim.~~

6 (5)(c) If the personal representative in good faith
7 fails to give notice required by this section ~~subsection~~, the
8 personal representative is not liable to any person for the
9 failure. Liability, if any, for the failure ~~in such a case~~ is
10 on the estate.

11 ~~(5) Objections under paragraph (1)(b), by persons on~~
12 ~~whom notice was served, that are not filed within the later of~~
13 ~~3 months after the date of first publication of the notice or~~
14 ~~30 days after the date of service of a copy of the notice on~~
15 ~~the objecting person are forever barred.~~

16 (6) If a will or codicil is subsequently admitted to
17 probate, the personal representative shall promptly serve a
18 copy of a new notice of administration as required for an
19 initial will admission.~~Claims under paragraph (1)(a) are~~
20 ~~barred as provided in s. 733.702.~~

21 Section 87. Section 733.2121, Florida Statutes, is
22 created to read:

23 733.2121 Notice to creditors; filing of claims.--

24 (1) Unless creditors' claims are otherwise barred by
25 s. 733.710, the personal representative shall promptly publish
26 a notice to creditors. The notice shall contain the name of
27 the decedent, the file number of the estate, the designation
28 and address of the court in which the proceedings are pending,
29 the name and address of the personal representative, the name
30 and address of the personal representative's attorney, and the
31 date of first publication. The notice shall state that

1 creditors must file claims against the estate with the court
2 within the time periods set forth in ss. 733.702 and 733.710,
3 or be forever barred.

4 (2) Publication shall be once a week for 2 consecutive
5 weeks, in a newspaper published in the county where the estate
6 is administered or, if there is no newspaper published in the
7 county, in a newspaper of general circulation in that county.

8 (3)(a) The personal representative shall promptly make
9 a diligent search to determine the names and addresses of
10 creditors of the decedent who are reasonably ascertainable,
11 even if the claims are unmatured, contingent, or unliquidated,
12 and shall promptly serve a copy of the notice on those
13 creditors. Impracticable and extended searches are not
14 required. Service is not required on any creditor who has
15 filed a claim as provided in this part, whose claim has been
16 paid in full, or whose claim is listed in a personal
17 representative's timely filed proof of claim.

18 (b) The personal representative is not individually
19 liable to any person for giving notice under this section,
20 even if it is later determined that notice was not required.
21 The service of notice to creditors in accordance with this
22 section shall not be construed as admitting the validity or
23 enforceability of a claim.

24 (c) If the personal representative in good faith fails
25 to give notice required by this section, the personal
26 representative is not liable to any person for the failure.
27 Liability, if any, for the failure is on the estate.

28 (d) If a decedent at the time of death was 55 years of
29 age or older, and was not survived by a spouse, a child or
30 children under 21 years of age at the time of death, or a
31 child or children who are blind or permanently and totally

1 disabled pursuant to the eligibility requirements of Title XIX
2 (Medicaid) of the Social Security Act, the personal
3 representative shall promptly serve a copy of the notice to
4 creditors on the Agency for Health Care Administration within
5 3 months after the first publication of the notice to
6 creditors, unless the agency has already filed a statement of
7 claim in the estate proceedings.

8 (e) If the Department of Revenue has not previously
9 been served with a copy of the notice to creditors, then
10 service of the inventory on the Department of Revenue shall be
11 the equivalent of service of a copy of the notice to
12 creditors.

13 (4) Claims are barred as provided in ss. 733.702 and
14 733.710.

15 Section 88. Section 733.2123, Florida Statutes, is
16 amended to read:

17 733.2123 Adjudication before issuance of letters.--A
18 petitioner may serve formal notice of the ~~his or her~~ petition
19 for administration on interested persons. A copy of the will
20 offered for ~~proposed to be admitted to~~ probate shall be
21 attached to the notice. No person who is served with formal
22 notice of the petition for administration prior to the
23 issuance of letters or who has waived notice may challenge the
24 validity of the will, testacy of the decedent, qualifications
25 of the personal representative, venue, or jurisdiction of the
26 court, except in ~~connection with~~ the proceedings before
27 issuance of letters.

28 Section 89. Section 733.213, Florida Statutes, is
29 amended to read:

30 733.213 Probate as prerequisite to judicial ~~petition~~
31 ~~for~~ construction of will.--A will may not be construed until

1 it has been admitted to probate ~~No pleading seeking~~
2 ~~construction of a will may be maintained until the will has~~
3 ~~first been probated.~~

4 Section 90. Section 733.301, Florida Statutes, is
5 amended to read:

6 733.301 Preference in appointment of personal
7 representative.--

8 (1) ~~In the granting of letters of administration,~~ the
9 following order of preference ~~preferences~~ shall be observed:

10 (a) ~~(1)~~ In testate estates:

11 1. ~~(a)~~ The personal representative, or his or her
12 successor, nominated by the will or pursuant to a power
13 conferred in the will.

14 2. ~~(b)~~ The person selected by a majority in interest of
15 the persons entitled to the estate.

16 3. ~~(c)~~ A devisee under the will. If more than one
17 devisee applies, the court may select ~~exercise its discretion~~
18 ~~in selecting~~ the one best qualified.

19 (b) ~~(2)~~ In intestate estates:

20 1. ~~(a)~~ The surviving spouse.

21 2. ~~(b)~~ The person selected by a majority in interest of
22 the heirs.

23 3. ~~(c)~~ The heir nearest in degree. If more than one
24 applies, the court may select ~~exercise its discretion in~~
25 ~~selecting~~ the one best qualified ~~for the office.~~

26 (2) ~~(3)~~ A guardian of the property of a ward who if
27 competent would be entitled to appointment as, or to select,
28 the ~~a~~ personal representative may exercise the right to select
29 the personal representative.

30 (3) ~~(4)~~ In either a testate or an intestate estate, if
31 no application is made by any of the persons described ~~named~~

1 in subsection (1) ~~or subsection (2)~~, the court shall appoint a
2 capable person; but no person may be appointed under this
3 subsection:

4 (a) Who works for, or holds public office under, the
5 court.

6 (b) Who is employed by, or holds office under, any
7 judge exercising probate jurisdiction.

8 ~~(4)(5)~~ After letters have been granted in either a
9 testate or an intestate estate, if a person who was entitled
10 to, and has not waived, preference over the person appointed
11 at the time of the ~~his or her~~ appointment and on whom formal
12 notice was not served seeks the appointment, the letters
13 granted may be revoked and the person entitled to preference
14 may have letters granted ~~to him or her~~ after formal notice and
15 hearing.

16 ~~(5)(6)~~ After letters have been granted in either a
17 testate or an intestate estate, if any will is subsequently
18 admitted to probate the letters shall be revoked and new
19 letters granted ~~as provided in subsection (1)~~.

20 Section 91. Section 733.302, Florida Statutes, is
21 amended to read:

22 733.302 Who may be appointed personal
23 representative.--Subject to the limitations in this part, any
24 person who is sui juris and ~~who~~ is a resident of Florida at
25 the time of the death of the person whose estate is to be
26 administered ~~he or she seeks to administer~~ is qualified to act
27 as personal representative in Florida. ~~A person who has been~~
28 ~~convicted of a felony or who, from sickness, intemperance, or~~
29 ~~want of understanding, is incompetent to discharge the duties~~
30 ~~of a personal representative is not qualified.~~

31

1 Section 92. Subsections (1) and (2) of section
2 733.305, Florida Statutes, are amended to read:

3 733.305 Trust companies and other corporations and
4 associations.--

5 (1) All trust companies incorporated under the laws of
6 Florida ~~the state~~, all state banking corporations and state
7 savings associations authorized and qualified to exercise
8 fiduciary powers in Florida, and all national banking
9 associations and federal savings and loan associations
10 authorized and qualified to exercise fiduciary powers in
11 Florida shall be entitled to act as personal representatives
12 and curators of estates.

13 (2) When a qualified corporation has been named as a
14 personal representative in a will and subsequently thereafter
15 transfers its business and assets to, consolidates or merges
16 with, or is in any manner provided by law succeeded by,
17 another qualified corporation, on the death of the testator,
18 the successor corporation may qualify as personal
19 representative, ~~and the court may issue letters to the~~
20 ~~successor corporation~~ unless the will provides otherwise.

21 Section 93. Section 733.306, Florida Statutes, is
22 amended to read:

23 733.306 Effect of appointment of debtor.--The
24 appointment of a debtor as personal representative shall not
25 extinguish the debt due to the decedent. ~~This section shall~~
26 ~~not prevent a testator from releasing a debtor by will.~~

27 Section 94. Section 733.307, Florida Statutes, is
28 amended to read:

29 733.307 Succession of administration.--~~The~~ ~~No~~ personal
30 representative of the estate of a deceased personal
31 representative is not ~~as such shall be~~ authorized to

1 administer the estate of the first decedent. On the death of
2 ~~a the~~ sole or surviving personal representative, the court
3 shall appoint a successor personal representative to complete
4 the administration of the estate.

5 Section 95. Section 733.308, Florida Statutes, is
6 amended to read:

7 733.308 Administrator ad litem.--When ~~it is necessary~~
8 ~~that~~ an estate must be represented and ~~the~~ ~~there is no~~
9 personal representative is unable to do so ~~of the estate~~, the
10 court shall appoint an administrator ad litem without bond to
11 represent the estate in that ~~for that particular~~ proceeding.
12 The fact that the personal representative is seeking
13 reimbursement for claims against the decedent ~~paid by the~~
14 ~~personal representative~~ does not require appointment of an
15 administrator ad litem.

16 Section 96. Section 733.309, Florida Statutes, is
17 amended to read:

18 733.309 Executor de son tort.--No person shall be
19 liable to a creditor of a decedent as executor de son tort,
20 but any person taking, converting, or intermeddling with the
21 property of a decedent shall be liable to the personal
22 representative or curator, when appointed, for the value of
23 all the property so taken or converted and for all damages to
24 the estate caused by the ~~his or her~~ wrongful action. This
25 section shall not be construed to prevent a creditor of a
26 decedent from suing anyone in possession of property
27 fraudulently conveyed by the decedent to set aside the
28 fraudulent conveyance.

29 Section 97. Section 733.310, Florida Statutes, is
30 created to read:

31

1 733.310 Personal representative not qualified.--Any
2 time a personal representative knows or should have known that
3 he or she would not be entitled to appointment if application
4 for appointment were then made, the personal representative
5 shall promptly file and serve a notice setting forth the
6 reasons. A personal representative who fails to comply with
7 this section shall be personally liable for costs, including
8 attorney's fees, incurred in any removal proceeding, if the
9 personal representative is removed. This liability shall be
10 cumulative to any other provided by law.

11 Section 98. Section 733.401, Florida Statutes, is
12 repealed:

13 ~~733.401 Issuance of letters.--~~

14 ~~(1) After the petition for administration is filed:~~

15 ~~(a) The will, if any, shall be proved as provided~~
16 ~~elsewhere in this code and shall be admitted to probate.~~

17 ~~(b) The court shall appoint the person entitled and~~
18 ~~qualified to be personal representative.~~

19 ~~(c) The court shall determine the amount of any bond~~
20 ~~required under this part. The clerk may approve the bond in~~
21 ~~the amount determined by the court and shall not charge a~~
22 ~~service fee.~~

23 ~~(d) Any required oath or designation of, and~~
24 ~~acceptance by, a resident agent shall be filed.~~

25 ~~(2) Upon compliance with all of the foregoing, letters~~
26 ~~shall be issued to the personal representative.~~

27 ~~(3) Mistaken noncompliance with any of the~~
28 ~~requirements of subsection (1) shall not be jurisdictional.~~

29 Section 99. Section 733.402, Florida Statutes, is
30 amended to read:

31

1 733.402 Bond of fiduciary ~~personal representative~~;
2 when required; form.--

3 (1) Unless the bond requirement has been waived by the
4 will or by the court ~~testator waived the requirement~~, every
5 fiduciary person to whom letters are granted shall execute and
6 file a bond with surety, as defined in s. 45.011, to be
7 approved by the clerk without a service fee. The bond shall be
8 payable to the Governor and the Governor's successors in
9 office, conditioned on the performance of all duties as
10 personal representative according to law. The bond must be
11 joint and several.

12 (2) No bond ~~executed by a personal representative or~~
13 ~~curator~~ shall be void or invalid because of an informality in
14 it or an informality or illegality in the appointment of the
15 fiduciary. The bond shall have the same force as if the
16 appointment had been legally made and the bond executed in
17 proper form.

18 (3) The requirements of this section shall not apply
19 to banks and trust companies authorized by law to act as
20 personal representative.

21 (4) On petition by any interested person or on the
22 court's own motion, the court may waive the requirement of
23 filing a bond, require a bond, increase or decrease the bond,
24 or require additional surety.

25 Section 100. Section 733.403, Florida Statutes, is
26 amended to read:

27 733.403 Amount of bond.--

28 ~~(1)~~ All bonds required by this part shall be in the
29 penal sum that the court deems sufficient after consideration
30 of the gross value of the estate, the relationship of the
31 personal representative to the beneficiaries, exempt property

1 and any family allowance, the type and nature of assets, known
2 creditors, and liens and encumbrances on the assets.

3 ~~(2) On petition by any interested person or on the~~
4 ~~court's own motion, the court may waive the requirement of~~
5 ~~filing a bond, require a personal representative or curator to~~
6 ~~give bond, increase or decrease the bond, or require~~
7 ~~additional surety.~~

8 Section 101. Section 733.404, Florida Statutes, is
9 amended to read:

10 733.404 Liability of surety.--No surety for any
11 personal representative or curator shall be charged beyond the
12 value of the assets of an estate because of any omission or
13 mistake in pleading or of false pleading of the personal
14 representative or curator.

15 Section 102. Section 733.405, Florida Statutes, is
16 amended to read:

17 733.405 Release of surety.--

18 (1) Subject to the limitations of this section, on the
19 petition of any interested person, the surety is entitled to
20 be released from liability for the future acts and omissions
21 of the fiduciary ~~On petitioning the surety, or the personal~~
22 ~~representative of a surety, on the bond of any personal~~
23 ~~representative or curator shall be entitled as a matter of~~
24 ~~right to be released from future liability upon the bond.~~

25 (2) Pending the hearing of the petition, the court may
26 restrain the fiduciary principal from acting in his or her
27 ~~representative capacity~~, except to preserve the estate.

28 (3) On hearing, the court shall enter an order
29 prescribing the amount of the new bond for the fiduciary
30 ~~personal representative or curator~~ and the date when the bond
31 shall be filed. If the fiduciary principal fails to give the

1 new bond, the fiduciary ~~he or she~~ shall be removed at once,
2 and further proceedings shall be had as in cases of removal.
3 (4) The original surety ~~or sureties~~ shall remain be
4 liable in accordance with the terms of its original bond for
5 all acts and omissions of the fiduciary that occur prior to
6 ~~personal representative or surety until he or she has given~~
7 the approval of the new surety and filing and approval of the
8 ~~bond and, after the giving of the new bond, shall remain~~
9 ~~liable for all the principal's acts to the time of the filing~~
10 ~~and approval of the new bond. The new surety shall be liable~~
11 on its bond ~~for the principal's acts~~ only after the filing and
12 approval of the new bond.

13 Section 103. Section 733.406, Florida Statutes, is
14 amended to read:

15 733.406 Bond premium allowable as expense of
16 administration or costs. ~~--A personal representative Any~~
17 ~~receiver, assignee, trustee, committee, guardian, executor or~~
18 ~~administrator, or other fiduciary required by law to give bond~~
19 shall pay the reasonable premium as an expense of
20 administration as such, may include as part of his or her
21 ~~lawful expense such reasonable sum paid such an insurer for~~
22 ~~such suretyship not exceeding 1 percent per annum on the~~
23 ~~amount of the bond, as the head of department, board, court,~~
24 ~~judge or officer by whom, or the court or body in which, he or~~
25 ~~she was appointed allows; and in all actions or proceedings~~
26 ~~the party entitled to recover costs may include therein such~~
27 ~~reasonable sum as may have been paid such an insurer executing~~
28 ~~or guaranteeing any bond or undertaking therein.~~

29 Section 104. Section 733.501, Florida Statutes, is
30 amended to read:

31 733.501 Curators.--

1 (1) When it is necessary, the court may appoint a
2 curator ~~after~~ and issue letters of curatorship to take charge
3 ~~of the estate of a decedent until letters are granted. If the~~
4 ~~person entitled to letters is a resident of the county where~~
5 ~~the property is situated, no curator shall be appointed until~~
6 ~~formal notice is given to the person~~ apparently so entitled to
7 letters of administration. The curator may be authorized to
8 perform any duty or function of a personal representative. If
9 there is great danger that any of the decedent's property is
10 likely to wasted, destroyed, or removed beyond the
11 jurisdiction of the court and if the appointment of a curator
12 would be delayed by giving notice, the court may appoint a
13 curator without giving notice.~~On appointment, the court shall~~
14 ~~direct the person in possession of the effects of the decedent~~
15 ~~to deliver them to the curator. The order may be enforced by~~
16 ~~contempt.~~

17 ~~(2) If there is great danger that the property or any~~
18 ~~part of it is likely to be wasted, destroyed, or removed~~
19 ~~beyond the jurisdiction of the court and if the appointment of~~
20 ~~a curator would be delayed by giving notice, the court may~~
21 ~~appoint a curator without giving notice.~~

22 ~~(3) On special order of the court, the curator may be~~
23 ~~authorized to perform any duty or function of a personal~~
24 ~~representative.~~

25 (2)(4) Bond shall be required of the curator as the
26 court deems necessary ~~to secure the property.~~ No bond shall
27 be required of banks and trust companies as curators.

28 ~~(5) The curator shall file an inventory of the~~
29 ~~property within 20 days. When the personal representative~~
30 ~~qualifies, the curator shall immediately account and deliver~~
31 ~~all assets of the estate in his or her hands to the personal~~

1 ~~representative within 20 days, and in default shall be subject~~
2 ~~to the provisions of this code relating to removal of personal~~
3 ~~representatives.~~

4 (3)(6) Curators shall be allowed reasonable
5 compensation for their services and the court may consider the
6 provisions of s. 733.617.

7 (4) Curators shall be subject to removal and
8 surchage.

9 Section 105. Section 733.502, Florida Statutes, is
10 amended to read:

11 733.502 Resignation of personal representative.--A
12 personal representative may resign ~~and be relieved of his or~~
13 ~~her office. Notice of the petition shall be given to all~~
14 ~~interested persons. Before relieving the personal~~
15 ~~representative from his or her duties and obligations, the~~
16 ~~court shall require the personal representative to file a true~~
17 ~~and correct account of his or her administration and deliver~~
18 ~~to his or her successor or to his or her joint personal~~
19 ~~representative all of the property of the decedent and all~~
20 ~~records concerning the estate. After notice to all interested~~
21 persons, the court may accept the resignation and then revoke
22 the letters of the resigning personal representative if the
23 interests of the estate are not jeopardized by the
24 resignation.The acceptance of the resignation, ~~after~~
25 ~~compliance with this section,~~shall not exonerate the any
26 personal representative or the ~~his or her~~ surety from
27 liability ~~previously incurred.~~

28 Section 106. Section 733.503, Florida Statutes, is
29 amended to read:

30 733.503 Appointment of successor upon
31 resignation.--When the personal representative's resignation

1 is accepted, the court shall appoint a personal representative
2 or shall appoint a curator to serve until a successor personal
3 representative is appointed ~~if there is no joint personal~~
4 ~~representative, a successor must be appointed and qualified~~
5 ~~before a personal representative may be relieved of his or her~~
6 ~~duties and obligations as provided in s. 733.502.~~

7 Section 107. Section 733.5035, Florida Statutes, is
8 created to read:

9 733.5035 Surrender of assets after resignation.--When
10 the resignation has been accepted by the court, all estate
11 assets, records, documents, papers, and other property of or
12 concerning the estate in the resigning personal
13 representative's possession or control shall immediately be
14 surrendered to the successor fiduciary. The court may
15 establish the conditions and specify the assets and records,
16 if any, that the resigning personal representative may retain
17 until the final accounting of the resigning personal
18 representative has been approved.

19 Section 108. Section 733.5036, Florida Statutes, is
20 created to read:

21 733.5036 Accounting and discharge following
22 resignation.--

23 (1) A resigning personal representative shall file and
24 serve a final accounting of the personal representative's
25 administration.

26 (2) After determination and satisfaction of the
27 liability, if any, of the resigning personal representative,
28 after compensation of the personal representative and the
29 attorney and other persons employed by the personal
30 representative, and upon receipt of evidence that
31 undistributed estate assets have been delivered to the

1 successor fiduciary, the personal representative shall be
2 discharged, the bond released, and the surety discharged.

3 Section 109. Section 733.504, Florida Statutes, is
4 amended to read:

5 733.504 ~~Causes of~~ Removal of personal representative;
6 causes for removal.--A personal representative may be removed
7 and the ~~his or her~~ letters revoked for any of the following
8 causes, and the removal shall be in addition to any penalties
9 prescribed by law:

10 (1) Adjudication of incompetency.

11 (2) Physical or mental incapacity rendering the
12 personal representative incapable of the discharge of his or
13 her duties.

14 (3) Failure to comply with any order of the court,
15 unless the order has been superseded on appeal.

16 (4) Failure to account for the sale of property or to
17 produce and exhibit the assets of the estate when so required.

18 (5) ~~The~~ Wasting or maladministration of the estate.

19 (6) Failure to give bond or security for any purpose.

20 (7) Conviction of a felony.

21 (8) Insolvency of, or the appointment of a receiver or
22 liquidator for, any corporate personal representative.

23 (9) ~~The~~ Holding or acquiring ~~by the personal~~
24 ~~representative of~~ conflicting or adverse interests against the
25 estate that will or may ~~adversely~~ interfere with the
26 administration of the estate as a whole. This cause of
27 removal shall not apply to the surviving spouse because of the
28 exercise of the right to the elective share, family allowance,
29 or exemptions, as provided elsewhere in this code.

30
31

1 (10) Revocation of the probate of the decedent's will
2 that authorized or designated the appointment of the such
3 personal representative.

4 (11) Removal of domicile from Florida, if domicile was
5 a requirement of initial appointment ~~the personal~~
6 ~~representative is no longer qualified under part III of this~~
7 ~~chapter.~~

8 (12) The personal representative would not now be
9 entitled to appointment.

10 Section 110. Section 733.505, Florida Statutes, is
11 amended to read:

12 733.505 Jurisdiction in removal proceedings.--A
13 petition for removal shall be filed in the court having
14 jurisdiction of the administration ~~issuing the letters.~~

15 Section 111. Section 733.506, Florida Statutes, is
16 amended to read:

17 733.506 Proceedings for removal.--Proceedings for
18 removal of a personal representative may be commenced by the
19 court or upon the petition of an ~~by any~~ interested person ~~or~~
20 ~~joint personal representative.~~ The court shall revoke the
21 letters of a removed personal representative. The removal of a
22 personal representative shall not exonerate the removed
23 personal representative or the removed personal
24 representative's surety from any liability.

25 Section 112. Section 733.5061, Florida Statutes, is
26 created to read:

27 733.5061 Appointment of successor upon removal.--When
28 a personal representative is removed, the court shall appoint
29 a personal representative or shall appoint a curator to serve
30 until a successor personal representative is appointed.

31

1 Section 113. Section 733.507, Florida Statutes, is
2 repealed:

3 ~~733.507 Administration following resignation or~~
4 ~~removal. When a personal representative has resigned or is~~
5 ~~removed and there is a remaining personal representative, no~~
6 ~~other personal representative shall be appointed unless the~~
7 ~~will otherwise requires. The remaining personal~~
8 ~~representative, together with any successor personal~~
9 ~~representative, if appointed, shall complete the~~
10 ~~administration of the estate. If the resigned or removed~~
11 ~~personal representative is a sole personal representative, the~~
12 ~~court shall appoint a successor personal representative as~~
13 ~~provided in s. 733.301.~~

14 Section 114. Section 733.508, Florida Statutes, is
15 amended to read:

16 733.508 Accounting and discharge of removed personal
17 representatives upon removal.--

18 (1) A removed personal representative shall file and
19 serve a final accounting of that personal representative's
20 administration.

21 (2) After determination and satisfaction of the
22 liability, if any, of the removed personal representative,
23 after compensation of that personal representative and the
24 attorney and other persons employed by that personal
25 representative, and upon receipt of evidence that the estate
26 assets have been delivered to the successor fiduciary, the
27 removed personal representative shall be discharged, the bond
28 released, and the surety discharged. ~~A removed personal~~
29 ~~representative shall file a full, true, and correct account of~~
30 ~~his or her administration within 30 days after removal.~~

31

1 Section 115. Section 733.509, Florida Statutes, is
2 amended to read:

3 733.509 Surrender of assets upon removal.--Upon entry
4 of an order removing a personal representative, the removed
5 personal representative shall immediately deliver all estate
6 assets, records, documents, papers, and other property of or
7 concerning the estate in the removed personal representative's
8 possession or control to the remaining personal representative
9 or successor fiduciary ~~The removed personal representative~~
10 ~~shall deliver to the remaining or successor personal~~
11 ~~representative all of the property of the decedent and all~~
12 ~~records, documents, papers, and other property of or~~
13 ~~concerning the estate.~~

14 Section 116. Section 733.601, Florida Statutes, is
15 amended to read:

16 733.601 Time of accrual of duties and powers.--The
17 duties and powers of a personal representative commence upon
18 ~~his or her~~ appointment. The powers of a personal
19 representative relate back in time to give acts by the person
20 appointed, occurring before appointment and beneficial to the
21 estate, the same effect as those occurring after appointment
22 ~~thereafter. Before issuance of letters, a person named~~
23 ~~executor in a will may carry out written instructions of the~~
24 ~~decedent relating to the decedent's body and funeral and~~
25 ~~burial arrangements.~~A personal representative may ratify and
26 accept acts on behalf of the estate done by others when the
27 acts would have been proper for a personal representative.

28 Section 117. Section 733.602, Florida Statutes, is
29 amended to read:

30 733.602 General duties.--

31

1 (1) A personal representative is a fiduciary who shall
2 observe the standards of care applicable to trustees as
3 described by s. 737.302. A personal representative is under a
4 duty to settle and distribute the estate of the decedent in
5 accordance with the terms of the decedent's will and this code
6 as expeditiously and efficiently as is consistent with the
7 best interests of the estate. A personal representative shall
8 use the authority conferred ~~upon him or her~~ by this code, the
9 authority in the will, if any, and the authority of any order
10 of the court ~~in proceedings to which he or she is party~~, for
11 the best interests of interested persons, including creditors
12 ~~as well as beneficiaries~~.

13 (2) A personal representative shall not be liable for
14 any act of administration or distribution if the act was
15 authorized at the time. Subject to other obligations of
16 administration, a probated will is authority to administer and
17 distribute the estate according to its terms. An order of
18 appointment of a personal representative is authority to
19 distribute apparently intestate assets to the heirs of the
20 decedent if, at the time of distribution, the personal
21 representative is not aware of a proceeding challenging
22 intestacy or a proceeding questioning the ~~his or her~~
23 appointment or fitness to continue. Nothing in this section
24 affects the duty of the personal representative to administer
25 and distribute the estate in accordance with the rights of
26 interested persons.

27 Section 118. Section 733.603, Florida Statutes, is
28 amended to read:

29 733.603 Personal representative to proceed without
30 court order.--A personal representative shall proceed
31 expeditiously with the settlement and distribution of a

1 decedent's estate and, except as otherwise specified by this
2 code or ordered by the court, shall do so without
3 adjudication, order, or direction of the court. A personal
4 representative may invoke the jurisdiction of the court to
5 resolve ~~judicial~~ questions concerning the estate or its
6 administration.

7 Section 119. Section 733.604, Florida Statutes, is
8 amended to read:

9 733.604 Inventory.--

10 (1)~~(a)~~ Unless an inventory has been previously filed
11 ~~within 60 days after issuance of letters,~~ a personal
12 representative ~~who is not a curator or a successor to another~~
13 ~~personal representative who has previously discharged the duty~~
14 shall file a verified ~~an~~ inventory of property of the estate,
15 listing it with reasonable detail and including for each
16 listed item its estimated fair market value at the date of the
17 decedent's death. Unless otherwise ordered by the court for
18 good cause shown, the ~~any such~~ inventory or amended or
19 supplementary inventory is subject to inspection only by the
20 clerk of the court, ~~or~~ the clerk's representative, the
21 personal representative, and the personal representative's
22 attorney, and other interested persons.

23 ~~(b) The initial opening of any safe-deposit box of the~~
24 ~~decedent must be conducted in the presence of an employee of~~
25 ~~the institution where the box is located and the personal~~
26 ~~representative. The inventory of the contents of the box also~~
27 ~~must be conducted in the presence of the employee and the~~
28 ~~personal representative, each of whom must verify the contents~~
29 ~~of the box by signing a copy of the inventory. The personal~~
30 ~~representative shall file the safe-deposit box inventory with~~
31 ~~the court within 10 days after the box is opened.~~

1 ~~(2) The personal representative shall serve a copy of~~
2 ~~the inventory on the Department of Revenue, as provided in s.~~
3 ~~199.062(4), the surviving spouse, each heir at law in an~~
4 ~~intestate estate, each residuary beneficiary in a testate~~
5 ~~estate, and any other interested person who may request it;~~
6 ~~and the personal representative shall file proof of such~~
7 ~~service. The inventory shall be verified by the personal~~
8 ~~representative.~~

9 (2)(3) If the personal representative learns of any
10 property not included in the original inventory, or learns
11 that the estimated value or description indicated in the
12 original inventory for any item is erroneous or misleading,
13 the personal representative he or she shall file a verified
14 prepare an amended or supplementary inventory showing any the
15 estimated value of the new items and their estimated value
16 item at the date of the decedent's death, or the revised
17 estimated value or description; ~~and the personal~~
18 ~~representative shall serve a copy of the amended or~~
19 ~~supplementary inventory on each person on whom a copy of the~~
20 ~~inventory was served and shall file proof of such service.~~
21 ~~The amended or supplementary inventory shall be verified by~~
22 ~~the personal representative.~~

23 (3)(4) Upon written request to the personal
24 representative, a beneficiary shall be furnished a written
25 explanation of how the inventory value for an asset was
26 determined, or, if an appraisal was obtained, a copy of the
27 appraisal, as follows:

28 (a) To a residuary beneficiary or heir in an intestate
29 estate, regarding all inventoried assets.

30 (b) To any other beneficiary, regarding all assets
31 distributed or proposed to be distributed to that beneficiary.

1 ~~Upon the written request of a beneficiary for any asset~~
2 ~~specifically devised to that beneficiary, a beneficiary for~~
3 ~~any asset received by that beneficiary in satisfaction of a~~
4 ~~general devise, or a residuary beneficiary of a intestate~~
5 ~~estate or an heir of an intestate estate, for any asset not~~
6 ~~specifically devised, the personal representative shall~~
7 ~~promptly furnish a written explanation of how the inventory~~
8 ~~value for the asset was determined, including whether the~~
9 ~~personal representative obtained an independent appraisal for~~
10 ~~that asset and from whom the appraisal was obtained. The~~
11 ~~personal representative must notify each beneficiary of that~~
12 ~~beneficiary's rights under this subsection the right to~~
13 ~~request information regarding determination of the inventory~~
14 ~~value of an asset. Neither a request nor the failure to~~
15 ~~request information under this subsection affects any rights~~
16 ~~of a beneficiary in subsequent proceedings concerning any~~
17 ~~accounting of the personal representative or the propriety of~~
18 ~~any action of the personal representative.~~

19 Section 120. Section 733.605, Florida Statutes, is
20 repealed:

21 ~~733.605 Appraisers.--The personal representative may~~
22 ~~employ a qualified and disinterested appraiser to assist him~~
23 ~~or her in ascertaining the fair market value of any asset at~~
24 ~~the date of the decedent's death or any other date that may be~~
25 ~~appropriate, the value of which may be subject to reasonable~~
26 ~~doubt. Different persons may be employed to appraise different~~
27 ~~kinds of assets included in the estate.~~

28 Section 121. Section 733.6065, Florida Statutes, is
29 created to read:

30 733.6065 Opening safe-deposit box.--The initial
31 opening of the decedent's safe-deposit box shall be conducted

1 in the presence of any two of the following persons: an
2 employee of the institution where the box is located, the
3 personal representative, or the personal representative's
4 attorney of record. Each person who is present must verify
5 the contents of the box by signing a copy of the inventory
6 under penalties of perjury. The personal representative shall
7 file the safe-deposit box inventory, together with a copy of
8 the box entry record from a date which is 6 months prior to
9 the date of death to the date of inventory, with the court
10 within 10 days after the box is opened. Unless otherwise
11 ordered by the court, this inventory and the attached box
12 entry record is subject to inspection only by persons entitled
13 to inspect an inventory under s. 733.604(1). The personal
14 representative may remove the contents of the box.

15 Section 122. Section 733.607, Florida Statutes, is
16 amended to read:

17 733.607 Possession of estate.--

18 (1) Except as otherwise provided by a decedent's will,
19 every personal representative has a right to, and shall take
20 possession or control of, the decedent's property, except the
21 protected homestead, but any real property or tangible
22 personal property may be left with, or surrendered to, the
23 person presumptively entitled to it unless possession of the
24 property by the personal representative will be necessary for
25 purposes of administration. The request by a personal
26 representative for delivery of any property possessed by a
27 beneficiary is conclusive evidence that the possession of the
28 property by the personal representative is necessary for the
29 purposes of administration, in any action against the
30 beneficiary for possession of it. The personal representative
31 shall take all steps reasonably necessary for the management,

1 protection, and preservation of the estate until distribution
2 ~~and. He or she~~ may maintain an action to recover possession of
3 property or to determine the title to it.

4 (2) If, after providing for statutory entitlements and
5 all devises other than residuary devises, the assets of the
6 decedent's estate are insufficient to pay the expenses of the
7 administration and obligations of the decedent's estate ~~and~~
8 ~~enforceable claims of the decedent's creditors~~, the personal
9 representative is entitled to payment from the trustee of a
10 trust described in s. 733.707(3), in the amount the personal
11 representative certifies in writing to be required to satisfy
12 the such insufficiency.

13 Section 123. Section 733.608, Florida Statutes, is
14 amended to read:

15 733.608 General power of the personal
16 representative.--

17 (1) All real and personal property of the decedent,
18 except the protected homestead, within this state and the
19 rents, income, issues, and profits from it shall be assets in
20 the hands of the personal representative:

21 ~~(a)(1)~~ For the payment of devises, ~~debts~~, family
22 allowance, elective share, estate and inheritance taxes,
23 claims, charges, and expenses of the administration and
24 obligations of the decedent's estate.

25 ~~(b)(2)~~ To enforce contribution and equalize
26 advancement.

27 ~~(c)(3)~~ For distribution.

28 (2) If property that reasonably appears to the
29 personal representative to be protected homestead is not in
30 the possession of a person who appears to have an interest in
31 the property, the personal representative is authorized, but

1 not required, to take possession of that property for the
2 limited purpose of preserving, insuring, and protecting it for
3 the heir or beneficiary, pending a determination of its
4 homestead status. If the personal representative takes
5 possession of that property, any rents and revenues may be
6 collected by the personal representative for the account of
7 the heir or beneficiary, but the personal representative shall
8 have no duty to rent or otherwise make the property
9 productive.

10 Section 124. Section 733.609, Florida Statutes, is
11 amended to read:

12 733.609 Improper exercise of power; breach of
13 fiduciary duty.--A personal representative's fiduciary duty is
14 the same as the fiduciary duty of a trustee of an express
15 trust and a personal representative is liable to interested
16 persons for damage or loss resulting from the breach of this
17 duty. In all actions for breach of fiduciary duty or
18 challenging the exercise of or failure to exercise a personal
19 representative's powers, the court shall award taxable costs
20 as in chancery actions, including attorney's fees ~~if the~~
21 ~~exercise of power concerning the estate is improper or in bad~~
22 ~~faith, the personal representative is liable to interested~~
23 ~~persons for damage or loss resulting from a breach of his or~~
24 ~~her fiduciary duty to the same extent as a trustee of an~~
25 ~~express trust. In all actions challenging the proper exercise~~
26 ~~of a personal representative's powers, the court shall award~~
27 ~~taxable costs as in chancery actions, including attorney's~~
28 ~~fees.~~

29 Section 125. Section 733.610, Florida Statutes, is
30 amended to read:

31

1 733.610 Sale, encumbrance or transaction involving
2 conflict of interest.--Any sale or encumbrance to the personal
3 representative or the personal representative's ~~his or her~~
4 spouse, agent, or attorney, or any corporation or trust in
5 which the personal representative has a substantial beneficial
6 interest, or any transaction that is affected by a conflict of
7 interest on the part of the personal representative, is
8 voidable by any interested person except one who has consented
9 after fair disclosure, unless:

10 (1) The will or a contract entered into by the
11 decedent expressly authorized the transaction; or

12 (2) The transaction is approved by the court after
13 notice to interested persons.

14 Section 126. Section 733.611, Florida Statutes, is
15 amended to read:

16 733.611 Persons dealing with the personal
17 representative; protection.--Except as provided in s.
18 733.613(1), a person who in good faith either assists or deals
19 for value with a personal representative ~~or deals with him or~~
20 ~~her for value~~ is protected as if the personal representative
21 acted properly ~~exercised his or her power~~. The fact that a
22 person knowingly deals with the personal representative does
23 not ~~alone~~ require the person to inquire into the authority of
24 the personal representative ~~existence of his or her power, the~~
25 ~~limits on the power, or the propriety of its exercise~~. A
26 person is not bound to see to the proper application of estate
27 assets paid or delivered to the personal representative. This
28 ~~The protection here expressed~~ extends to instances in which a
29 procedural irregularity or jurisdictional defect occurred in
30 proceedings leading to the issuance of letters, including a
31 case in which the alleged decedent is alive. This protection

1 is in addition to any protection afforded by ~~The protection~~
2 ~~here expressed is not by substitution for that provided in~~
3 comparable provisions of the laws relating to commercial
4 transactions and laws simplifying transfers of securities by
5 fiduciaries.

6 Section 127. Section 733.612, Florida Statutes, is
7 amended to read:

8 733.612 Transactions authorized for the personal
9 representative; exceptions.--Except as otherwise provided by
10 the will or court ~~by order of court~~, and subject to the
11 priorities stated in s. 733.805, without court ~~order of court~~,
12 a personal representative, acting reasonably for the benefit
13 of the interested persons, may properly:

14 (1) Retain assets owned by the decedent, pending
15 distribution or liquidation, including those in which the
16 personal representative is personally interested or that are
17 otherwise improper for fiduciary ~~trust~~ investments.

18 (2) Perform or compromise, or, when proper, refuse to
19 perform ~~performance of~~, the decedent's contracts. In
20 performing the decedent's enforceable contracts ~~by the~~
21 ~~decedent~~ to convey or lease real property, among other
22 possible courses of action, the personal representative may:

23 (a) Convey the real property for cash payment of all
24 sums remaining due or for the purchaser's note for the sum
25 remaining due, secured by a mortgage on the property ~~land~~.

26 (b) Deliver a deed in escrow, with directions that the
27 proceeds, when paid in accordance with the escrow agreement,
28 be paid as provided ~~to the distributees of the decedent, as~~
29 ~~designated~~ in the escrow agreement.

30 (3) Receive assets from fiduciaries or other sources.
31

1 (4) Invest funds as provided in ss. 518.10-518.14,
2 considering the amount to be invested, liquidity needs of the
3 estate, and the time until distribution will be made ~~if funds~~
4 ~~are not needed to meet debts and expenses currently payable~~
5 ~~and are not immediately distributable, deposit or invest~~
6 ~~liquid assets of the estate, including moneys received from~~
7 ~~the sale of other assets, in federally insured~~
8 ~~interest-bearing accounts, readily marketable secured loan~~
9 ~~arrangements, or other prudent investments that would be~~
10 ~~reasonable for use by trustees.~~

11 (5) Acquire or dispose of an asset, excluding real
12 property in this or another state, for cash or on credit and
13 at public or private sale, and manage, develop, improve,
14 exchange, partition, or change the character of an estate
15 asset.

16 (6) Make ordinary or extraordinary repairs or
17 alterations in buildings or other structures; demolish
18 improvements; or erect new party walls or buildings.

19 (7) Enter into a lease, as lessor or lessee, for a
20 term within, or extending beyond, the period of
21 administration, with or without an option to renew.

22 (8) Enter into a lease or arrangement for exploration
23 and removal of minerals or other natural resources or enter
24 into a pooling or unitization agreement.

25 (9) Abandon property when it is valueless or so
26 encumbered, or in a such ~~such~~ condition, that it is of no benefit
27 to the estate.

28 (10) Vote, or refrain from voting, stocks or other
29 securities in person or by general or limited proxy.

30
31

1 (11) Pay calls, assessments, and other sums chargeable
2 or accruing against, or on account of, securities, unless
3 barred by the provisions relating to claims.

4 (12) Hold property in the name of a nominee or in
5 other form without disclosure of the interest of the estate,
6 but the personal representative is liable for any act of the
7 nominee in connection with the property so held.

8 (13) Insure the assets of the estate against damage
9 ~~or loss, and liability~~ and insure against personal and
10 fiduciary liability ~~himself or herself against liability~~ to
11 third persons.

12 (14) Borrow money, with or without security, to be
13 repaid from the estate assets or otherwise, other than real
14 property, and advance money for the protection of the estate.

15 (15) Extend, renew, or in any manner modify any
16 obligation owing to the estate. If the personal representative
17 holds a mortgage, security interest, or other lien upon
18 property of another person, he or she may accept a conveyance
19 or transfer of encumbered assets from the owner in
20 satisfaction of the indebtedness secured by its lien instead
21 of foreclosure.

22 (16) Pay taxes, assessments, and other expenses
23 incident to the administration of the estate.

24 (17) Sell or exercise stock subscription or conversion
25 rights or consent, directly or through a committee or other
26 agent, to the reorganization, consolidation, merger,
27 dissolution, or liquidation of a corporation or other business
28 enterprise.

29 (18) Allocate items of income or expense to either
30 estate income or principal, as permitted or provided by law.

31

1 (19) Employ persons, including, but not limited to,
2 attorneys, accountants, auditors, appraisers, investment
3 advisers, and others, even if they are one and the same as the
4 personal representative or are associated with the personal
5 representative, to advise or assist the personal
6 representative in the performance of ~~his or her~~ administrative
7 duties; act upon the recommendations of those ~~such~~ employed
8 persons without independent investigation; and, instead of
9 acting personally, employ one or more agents to perform any
10 act of administration, whether or not discretionary. Any fees
11 and compensation paid to a ~~any such~~ person who is the same as,
12 associated with, or employed by, the personal representative
13 shall be taken into consideration in determining the personal
14 representative's compensation.

15 (20) Prosecute or defend claims or proceedings in any
16 jurisdiction for the protection of the estate and of the
17 personal representative ~~in the performance of his or her~~
18 ~~duties~~.

19 (21) Sell, mortgage, or lease any personal property of
20 the estate or any interest in it for cash, credit, or for part
21 cash or part credit, and with or without security for the
22 unpaid balance.

23 (22) Continue any unincorporated business or venture
24 in which the decedent was engaged at the time of ~~his or her~~
25 death:

26 (a) In the same business form for a period of not more
27 than 4 months from the date of ~~his or her~~ appointment, if
28 continuation is a reasonable means of preserving the value of
29 the business, including good will.

30 (b) In the same business form for any additional
31 period of time that may be approved by court order ~~of court~~.

1 (23) Provide for exoneration of the personal
2 representative from personal liability in any contract entered
3 into on behalf of the estate.

4 (24) Satisfy and settle claims and distribute the
5 estate as provided in this code.

6 (25) Enter into agreements with the proper officer or
7 department head, commissioner, or agent of any department of
8 the government of the United States, waiving the statute of
9 limitations concerning the assessment and collection of any
10 federal tax or any deficiency in a federal tax.

11 (26) Make partial ~~part~~ distribution to the
12 beneficiaries of any part of the estate not necessary to
13 satisfy claims, expenses of administration, taxes, family
14 allowance, exempt property, and an elective share, in
15 accordance with the decedent's will or as authorized by
16 operation of law.

17 (27) Execute any instruments necessary in the exercise
18 of the personal representative's powers.

19 Section 128. Section 733.6121, Florida Statutes, is
20 amended to read:

21 733.6121 Powers of personal representatives conferred
22 by this part in relation to environmental or human health laws
23 affecting property subject to administration or to property
24 subject to administration contaminated with hazardous or toxic
25 substances; liability.--

26 (1) Except as otherwise provided by the will or by
27 court order ~~of court~~, and subject to s. 733.805, the personal
28 representative has, without court authorization, the powers
29 specified in subsection (2).

30
31

1 (2) A personal representative has the power, acting
2 reasonably and for the benefit of the interested persons
3 ~~parties~~:

4 (a) To inspect or investigate, or cause to be
5 inspected or investigated, property subject to administration,
6 including interests in sole proprietorships, partnerships, or
7 corporations and any assets owned by ~~any~~ such a business
8 entity for the purpose of determining compliance with an
9 environmental law affecting that property or to respond to an
10 actual or threatened violation of an environmental law
11 affecting that property;

12 (b) To take, on behalf of the estate, any action
13 necessary to prevent, abate, or otherwise remedy an actual or
14 potential violation of an environmental law affecting property
15 subject to administration, either before or after initiation
16 of an enforcement action by a governmental body;

17 (c) To settle or compromise at any time any claim
18 against the estate or the personal representative that may be
19 asserted by a governmental body or private party which
20 involves the alleged violation of an environmental law
21 affecting property subject to administration over which the
22 personal representative has responsibility;

23 (d) To disclaim any power granted by any document,
24 statute, or rule of law which, in the sole judgment of the
25 personal representative, could cause the personal
26 representative to incur personal liability, or the estate to
27 incur liability, under any environmental law;

28 (e) To decline to serve as a personal representative,
29 or having undertaken to serve ~~as a personal representative~~, to
30 resign at any time, if the personal representative believes
31 that there is or could be a conflict of interest ~~in his or her~~

1 ~~fiduciary capacity and in his or her individual capacity~~
2 because of potential claims or liabilities that could be
3 asserted ~~against it~~ on behalf of the estate by reason of the
4 type or condition of the assets held; or
5 (f) To charge against the assets of the estate the
6 cost of any inspection, investigation, review, abatement,
7 response, cleanup, or remedial action considered reasonable by
8 the personal representative ~~that this section authorizes the~~
9 ~~personal representative to take~~; and, in the event of the
10 closing or termination of the estate or the transfer of the
11 estate property to another personal representative, to hold
12 moneys sufficient to cover the cost of cleaning up any known
13 environmental problem.
14 (3) A personal representative is not personally liable
15 to any beneficiary or any other party for a decrease in value
16 of assets in an estate by reason of the personal
17 representative's compliance or efforts to comply with an
18 environmental law, specifically including any reporting
19 requirement under that law.
20 (4) A personal representative who acquires ownership
21 or control of a vessel or other property without having owned,
22 operated, or materially participated in the management of that
23 vessel or property before assuming ownership or control as
24 personal representative is not considered an owner or operator
25 for purposes of liability under chapter 376, chapter 403, or
26 any other environmental law. A personal representative who
27 willfully, knowingly, or recklessly causes or exacerbates a
28 release or threatened release of a hazardous substance is
29 personally liable for the cost of the response, to the extent
30 that the release or threatened release is attributable to the
31 personal representative's activities. This subsection does

1 not preclude the filing of claims against the assets that
2 constitute the estate held by the personal representative or
3 the filing of actions against the personal representative as
4 representative of the estate ~~in his or her representative~~
5 ~~capacity~~. In any such an action, an award or judgment against
6 the personal representative must be satisfied only from the
7 assets of the estate.

8 (5) Neither the acceptance by the personal
9 representative of the property or a failure by the personal
10 representative to inspect or investigate the property creates
11 any inference of ~~as to whether there is~~ liability under an
12 environmental law with respect to that property.

13 (6) For the purposes of this section, the term
14 "environmental law" means a federal, state, or local law,
15 rule, regulation, or ordinance that relates to protection of
16 the environment or human health, and the term "hazardous
17 substance" means a substance, material, or waste defined as
18 hazardous or toxic, or any contaminant, pollutant, or
19 constituent thereof, or otherwise regulated by an
20 environmental law.

21 (7) This section applies to any estate admitted to
22 probate on or after July 1, 1995.

23 Section 129. Section 733.613, Florida Statutes, is
24 amended to read:

25 733.613 Personal representative's right to sell real
26 property.--

27 (1) When a personal representative of an ~~a decedent~~
28 ~~dying~~ intestate estate, or whose testator has not conferred
29 ~~upon him or her~~ a power of sale or whose testator has granted
30 a power of sale but the ~~his or her~~ power is so limited by the
31 will or by operation of law that it cannot be conveniently

1 exercised, shall consider that it is for the best interest of
2 the estate and of those interested in it that real property be
3 sold, the personal representative may sell it at public or
4 private sale. No title shall pass until ~~the sale is~~
5 ~~authorized or confirmed by the court~~ authorizes or confirms
6 the sale. ~~Petition for authorization or confirmation of sale~~
7 ~~shall set forth the reasons for the sale, a description of the~~
8 ~~property sold or to be sold, and the price and terms of the~~
9 ~~sale. Except when interested persons have joined in the~~
10 ~~petition for sale of real property or have consented to the~~
11 ~~sale, notice of the petition shall be given.~~ No bona fide
12 purchaser shall be required to examine any proceedings before
13 the order of sale.

14 (2) When a decedent's will confers specific power to
15 sell or mortgage real property or a general power to sell any
16 asset of the estate, the personal representative may sell,
17 mortgage, or lease, without authorization or confirmation of
18 court, any real property of the estate or any interest therein
19 for cash or credit, or for part cash and part credit, and with
20 or without security for unpaid balances. The sale, mortgage,
21 or lease need not be justified by a showing of necessity, and
22 the sale pursuant to power of sale shall be valid.

23 (3) In a sale or mortgage which occurs under a
24 specific power to sell or mortgage real property, or under a
25 court order authorizing or confirming that act, the purchaser
26 or lender takes title free of claims of creditors of the
27 estate and entitlements of estate beneficiaries.

28 Section 130. Section 733.614, Florida Statutes, is
29 amended to read:

30 733.614 Powers and duties of successor personal
31 representative.--A successor personal representative has the

1 same power and duty as the original personal representative to
2 complete the administration and distribution of the estate as
3 expeditiously as possible, but ~~he or she~~ shall not exercise
4 any power made personal to the personal representative named
5 in the will without court approval.

6 Section 131. Section 733.615, Florida Statutes, is
7 amended to read:

8 733.615 Joint personal representatives; when joint
9 action required.--

10 (1) If two or more persons are appointed joint
11 personal representatives, and unless the will provides
12 otherwise, the concurrence of all joint personal
13 representatives appointed pursuant to a will or codicil
14 executed prior to October 1, 1987, or appointed to administer
15 an intestate estate of a decedent who died prior to October 1,
16 1987, or of a majority of joint personal representatives
17 appointed pursuant to a will or codicil executed on or after
18 October 1, 1987, or appointed to administer an ~~the~~ intestate
19 estate of a decedent dying on or after October 1, 1987, is
20 required on all acts connected with the administration and
21 distribution of the estate. This restriction does not apply
22 when any joint personal representative receives and receipts
23 for property due the estate, when the concurrence required
24 under this subsection cannot readily be obtained in the time
25 reasonably available for emergency action necessary to
26 preserve the estate, or when a joint personal representative
27 has been delegated to act for the others.

28 (2) Where action by a majority of the joint personal
29 representatives appointed is authorized, a joint personal
30 representative who has not joined in exercising a power is not
31 liable to the beneficiaries or to others for the consequences

1 of the exercise, and a dissenting joint personal
2 representative is not liable for the consequences of an action
3 ~~act~~ in which the dissenting personal representative ~~he or she~~
4 joins at the direction of the majority of the joint personal
5 representatives, if the dissent is ~~he or she~~ expressed ~~his or~~
6 ~~her dissent~~ in writing to the other ~~any of his or her~~ joint
7 personal representatives at or before the time of the action
8 joinder.

9 (3) A person dealing with a joint personal
10 representative without actual knowledge that joint personal
11 representatives have been appointed or if advised by a ~~the~~
12 joint personal representative ~~with whom he or she deals~~ that
13 the joint personal representative has authority to act alone
14 for any of the reasons mentioned in subsection (1) is as fully
15 protected in dealing with that joint personal representative
16 as if that joint personal representative possessed and
17 properly exercised the power ~~he or she purports to exercise~~.

18 Section 132. Section 733.616, Florida Statutes, is
19 amended to read:

20 733.616 Powers of surviving personal
21 representatives.--Unless otherwise provided by the terms of
22 the will or a court order ~~otherwise provide~~, every power
23 exercisable by joint personal representatives may be exercised
24 by the one or more remaining after the appointment of one or
25 more is terminated, ~~and~~ If one or more, but not all,
26 nominated as joint personal representatives are not appointed,
27 those appointed may exercise all ~~the~~ powers granted to those
28 nominated ~~incident to the office~~.

29 Section 133. Section 733.617, Florida Statutes, is
30 amended to read:

31 733.617 Compensation of personal representative.--

1 (1) A personal representative shall be entitled to a
2 commission payable from the estate assets without court order
3 as compensation for ordinary services. The commission shall
4 be based on the compensable value of the estate, which is the
5 inventory value of the probate estate assets and the income
6 earned by the estate during administration ~~As compensation for~~
7 ~~its ordinary services, a personal representative shall be~~
8 ~~entitled, without order of court unless otherwise stated, to a~~
9 ~~commission payable from the estate assets. Such commission~~
10 ~~shall be based upon the probate estate's value as determined~~
11 ~~finally for probate inventory purposes and as accounted for by~~
12 ~~the personal representative, which value shall include all~~
13 ~~property, real or personal, tangible or intangible, and all~~
14 ~~income earned thereon.~~

15 (2) A commission computed on the compensable value of
16 the estate is presumed to be reasonable compensation for a
17 personal representative in formal administration ~~Upon the~~
18 ~~probate estate's value as defined in subsection (1), such~~
19 ~~commission shall be computed as follows:~~

20 (a) At the rate of 3 percent for the first \$1 million.

21 (b) At the rate of 2.5 percent for all above \$1
22 million and not exceeding \$5 million.

23 (c) At the rate of 2 percent for all above \$5 million
24 and not exceeding \$10 million.

25 (d) At the rate of 1.5 percent for all above \$10
26 million.

27 (3) In addition to the previously described ~~aforsaid~~
28 ~~commission, a personal representative shall be allowed such~~
29 ~~further compensation as is the court may deem just and~~
30 ~~reasonable for any extraordinary services including, but not~~
31 ~~limited to:~~

- 1 (a) The sale of real or personal property.
- 2 (b) The conduct of litigation on behalf of or against
3 the estate.
- 4 (c) Involvement in proceedings for the adjustment or
5 payment of any taxes.
- 6 (d) The carrying on of the decedent's business.
- 7 (e) Dealing with protected homestead.
- 8 (f)~~(e)~~ Any other special services which may be
9 necessary for the personal representative to perform.
- 10 (4) If the ~~a decedent's~~ will provides that a personal
11 representative's compensation shall be based upon specific
12 criteria, other than a general reference to commissions
13 allowed by law or words or similar import, including, but not
14 limited to, rates, amounts, commissions, or reference to the
15 personal representative's regularly published schedule of fees
16 in effect at the decedent's date of death, or words of similar
17 import, then a personal representative shall be entitled to
18 compensation in accordance with that ~~such~~ provision. However,
19 except for ~~such~~ references in the ~~a decedent's~~ will to the
20 personal representative's regularly published schedule of fees
21 in effect at the decedent's date of death, or words of similar
22 import, if there is no written contract with the decedent
23 regarding compensation, a personal representative may renounce
24 the provisions contained in the will and be entitled to
25 compensation under this section hereunder. A personal
26 representative may also renounce the ~~its~~ right to all or any
27 part of the compensation.
- 28 (5) If the probate estate's compensable value ~~as~~
29 ~~defined in subsection (1)~~ is \$100,000 or more, and there are
30 two representatives, each personal representative is entitled
31 to the full commission allowed to a sole personal

1 representative. If there are more than two personal
2 representatives and the probate estate's compensable value is
3 ~~more than~~ \$100,000 or more, the compensation to which two
4 would be entitled must be apportioned among the personal
5 representatives. The basis for ~~such~~ apportionment shall be
6 one full commission allowed to the personal representative who
7 has possession of and primary responsibility for
8 administration of the assets and one full commission among the
9 remaining personal representatives according to the services
10 rendered by each of them respectively. If the probate
11 estate's compensable value is less than \$100,000 and there is
12 more than one personal representative, then one full
13 ~~commission allowed herein to a sole personal representative~~
14 must be apportioned among the personal representatives
15 according to the services rendered by each of them
16 respectively.

17 (6) If the personal representative is a member of The
18 Florida Bar and has rendered legal services in connection with
19 the administration of the estate, then in addition to a fee as
20 personal representative, there also shall be allowed a fee for
21 the legal services rendered.

22 (7) Upon petition of any interested person, the court
23 may increase or decrease the compensation for ordinary
24 services of the personal representative or award compensation
25 for extraordinary services if the facts and circumstances of
26 the particular administration warrant. In determining
27 reasonable compensation, the court shall consider all of the
28 following factors, giving weight to each as it determines to
29 be appropriate ~~The compensation for a personal representative~~
30 ~~as set forth in subsections (2) and (3) may, upon petition of~~
31 ~~any interested person, be increased or decreased by the court.~~

1 ~~In determining whether to increase or decrease the~~
2 ~~compensation for ordinary services, the court must consider~~
3 ~~each of the following factors, giving each such weight as it~~
4 ~~determines to be appropriate:~~
5 (a) The promptness, efficiency, and skill with which
6 the administration was handled by the personal representative;
7 (b) The responsibilities assumed by and the potential
8 liabilities of the personal representative;
9 (c) The nature and value of the assets that are
10 affected by the decedent's death;
11 (d) The benefits or detriments resulting to the estate
12 or interested persons ~~its beneficiaries~~ from the personal
13 representative's services;
14 (e) The complexity or simplicity of the administration
15 and the novelty ~~novelties~~ of the issues presented;
16 (f) The personal representative's participation in tax
17 planning for the estate and the estate's beneficiaries and in
18 tax return preparation, review, or approval;
19 (g) The nature of the probate, nonprobate, and exempt
20 assets, ~~the~~ expenses of administration, ~~the~~ liabilities of
21 the decedent, ~~and~~ the compensation paid to other
22 professionals and fiduciaries;
23 (h) Any delay in payment of the compensation after the
24 services were furnished; and
25 (i) Any other relevant factors.
26 Section 134. Section 733.6171, Florida Statutes, is
27 amended to read:
28 733.6171 Compensation of attorney for the personal
29 representative.--
30
31

1 (1) Attorneys for personal representatives shall be
2 entitled to reasonable compensation ~~for their services~~ payable
3 from the estate assets ~~of the estate~~ without court order.

4 (2) The attorney, the personal representative, and
5 persons bearing the impact of the compensation may agree to
6 compensation determined in a different manner than provided in
7 this section. Compensation may also be determined in a
8 different manner than provided in this section if the manner
9 is disclosed to the parties bearing the impact of the
10 compensation and if no objection is made as provided for in
11 the Florida Probate Rules in the petition for discharge or
12 final accounting and there is no objection filed pursuant to
13 s. 733.901.

14 (3) Compensation ~~provided in the following schedule~~
15 for ordinary services of attorneys in formal estate
16 administration is presumed to be reasonable if based on the
17 compensable upon the inventory value of the estate, which is
18 the inventory value of the probate estate assets and the
19 income earned by the estate during the administration as
20 provided in the following schedule ~~is presumed to be~~
21 ~~reasonable compensation for attorneys in formal estate~~
22 ~~administration:~~

23 (a) One thousand five hundred dollars for estates
24 having a value of \$40,000 or less.

25 (b) An additional \$750 for estates having a value of
26 more than \$40,000 and not exceeding \$70,000.

27 (c) An additional \$750 for estates having a value of
28 more than \$70,000 and not exceeding \$100,000.

29 (d) For estates having a value in excess of \$100,000,
30 at the rate of 3 percent on the next \$900,000.

31

1 (e) At the rate of 2.5 percent for all above \$1
2 million and not exceeding \$3 million.

3 (f) At the rate of 2 percent for all above \$3 million
4 and not exceeding \$5 million.

5 (g) At the rate of 1.5 percent for all above \$5
6 million and not exceeding \$10 million.

7 (h) At the rate of 1 percent for all above \$10
8 million.

9 (4) In addition to ~~the attorney's~~ fees for ordinary
10 services, the attorney for the personal representative shall
11 be allowed further reasonable compensation for any
12 extraordinary service. What is an extraordinary service may
13 vary depending on many factors, including the size of the
14 estate. Extraordinary services may include, but are not
15 limited to:

16 (a) Involvement in a will contest, will construction,
17 a proceeding for determination of beneficiaries, a contested
18 claim, elective share proceeding, apportionment of estate
19 taxes, or any ~~other~~ adversarial proceeding or litigation by or
20 against the estate.

21 (b) Representation of the personal representative in
22 audit or any proceeding for adjustment, determination, or
23 collection of any taxes.

24 (c) Tax advice on postmortem tax planning, including,
25 but not limited to, disclaimer, renunciation of fiduciary
26 commission, alternate valuation date, allocation of
27 administrative expenses between tax returns, the QTIP or
28 reverse QTIP election, allocation of GST exemption,
29 qualification for Internal Revenue Code ss. 6166 and 303
30 privileges, deduction of last illness expenses, fiscal year
31 planning, distribution planning, asset basis considerations,

1 handling income or deductions in respect of a decedent,
2 valuation discounts, special use and other valuation, handling
3 employee benefit or retirement proceeds, prompt assessment
4 request, or request for release of personal liability for
5 payment of tax.

6 (d) Review of estate tax return and preparation or
7 review of other tax returns required to be filed by the
8 personal representative.

9 (e) Preparation of the estate's federal estate tax
10 return. If this return is prepared by the attorney, a fee of
11 one-half of 1 percent up to a value of \$10 million and
12 one-fourth of 1 percent on the value in excess of \$10 million
13 of the gross estate as finally determined for federal estate
14 tax purposes, is presumed to be reasonable compensation for
15 the attorney for this service. These fees shall include
16 services for routine audit of the return, not beyond the
17 examining agent level, if required.

18 (f) Purchase, sale, lease, or encumbrance of real
19 property by the personal representative or involvement in
20 zoning, land use, environmental, or other similar matters.

21 (g) Legal advice regarding carrying on of the
22 decedent's business or conducting other commercial activity by
23 the personal representative.

24 (h) Legal advice regarding claims for damage to the
25 environment or related procedures.

26 (i) Legal advice regarding homestead status of real
27 property or proceedings involving that status and services
28 related to protected homestead.

29 (j) Involvement in fiduciary, employee, or attorney
30 compensation disputes.

31

1 (k) Proceedings involving ancillary administration of
2 assets not subject to administration in this state.

3 (5) Upon petition of any interested person, the court
4 may increase or decrease the compensation for ordinary
5 services of the attorney or award compensation for
6 extraordinary services if the facts and circumstances of the
7 particular administration warrant. In determining reasonable
8 compensation, the court shall consider all of the following
9 factors, giving such weight to each as it determines ~~may~~
10 ~~determine~~ to be appropriate:

11 (a) The promptness, efficiency, and skill with which
12 the administration was handled by the attorney.

13 (b) The responsibilities assumed by ~~and~~ the potential
14 liabilities of ~~the~~ attorney.

15 (c) The nature and value of the assets that are
16 affected by the decedent's death.

17 (d) The benefits or detriments resulting to the estate
18 or interested persons ~~its beneficiaries~~ from the attorney's
19 services.

20 (e) The complexity or simplicity of the administration
21 and the novelty of issues presented.

22 (f) The attorney's participation in tax planning for
23 the estate and the estate's beneficiaries and tax return
24 preparation, or review, or ~~and~~ approval.

25 (g) The nature of the probate, nonprobate, and exempt
26 assets, the expenses of administration, the ~~and~~ liabilities of
27 the decedent, and the compensation paid to other professionals
28 and fiduciaries.

29 (h) Any delay in payment of the compensation after the
30 services were furnished.

31 (i) Any other relevant factors.

1 ~~(6) The court may determine reasonable attorney's~~
2 ~~compensation without receiving expert testimony. Any party~~
3 ~~may offer expert testimony after notice to interested persons.~~
4 ~~If expert testimony is offered, an expert witness fee may be~~
5 ~~awarded by the court and paid from the assets of the estate.~~
6 ~~The court may, in its discretion, direct from what part of the~~
7 ~~estate it shall be paid.~~

8 (6)~~(7)~~ If a separate written agreement regarding
9 compensation exists between the attorney and the decedent, the
10 attorney shall furnish a copy to the personal representative
11 prior to commencement of employment, and, if employed, shall
12 promptly file and serve a copy on all interested persons.
13 Neither a separate agreement nor a provision in the will
14 suggesting or directing that the personal representative ~~to~~
15 retain a specific attorney will obligate the personal
16 representative to employ the attorney or obligate the attorney
17 to accept the representation, but if the attorney who is a
18 party to the agreement or who drafted the will is employed,
19 the compensation paid shall not exceed the compensation
20 provided in the agreement or in the will.

21 ~~(8) Court proceedings to determine compensation, if~~
22 ~~required, are a part of the estate administration process, and~~
23 ~~the costs, including fees for the personal representative's~~
24 ~~attorney, shall be determined by the court and paid from the~~
25 ~~assets of the estate unless the court finds the request for~~
26 ~~attorney's fees to be substantially unreasonable. The court~~
27 ~~shall direct from which part of the estate they shall be paid.~~

28 ~~(9) The amount and manner of determining compensation~~
29 ~~for attorneys for personal representatives must be disclosed~~
30 ~~in the final accounting, unless the disclosure is waived in~~
31 ~~writing signed by the parties bearing the impact of the~~

1 ~~compensation and filed with the court. No such waiver shall~~
2 ~~be valid unless it contains language declaring that the~~
3 ~~waiving party has actual knowledge of the amount and manner of~~
4 ~~determining such compensation and, in addition, expressly~~
5 ~~acknowledging either one of the following two elements:~~

6 ~~(a) That the waiving party has agreed to the amount~~
7 ~~and manner of determining such compensation and is waiving any~~
8 ~~objections to payment of such compensation; or~~

9 ~~(b) That the waiving party has the right under~~
10 ~~subsection (5) to petition the court to decrease such~~
11 ~~compensation and is waiving that right.~~

12
13 ~~The requirements of this subsection shall not apply if the~~
14 ~~full amount of such compensation has previously been~~
15 ~~determined by order of the court after notice. A waiver of~~
16 ~~the final accounting shall not be effective if it does not~~
17 ~~meet the requirements of this subsection.~~

18 ~~(10) This section shall apply to estates in which an~~
19 ~~order of discharge has not been entered prior to its effective~~
20 ~~date but not to those estates in which attorney's fees have~~
21 ~~previously been determined by order of court after notice.~~

22 Section 135. Section 733.6175, Florida Statutes, is
23 amended to read:

24 733.6175 Proceedings for review of employment of
25 agents and compensation of personal representatives and
26 employees of estate.--

27 (1) The court may review the propriety of the
28 employment of any person employed by the personal
29 representative and the reasonableness of any compensation paid
30 to that person or to the personal representative.

31

1 (2) Court proceedings to determine reasonable
2 compensation of the personal representative or any person
3 employed by the personal representative, if required, are a
4 part of the estate administration process, and the costs,
5 including attorneys' fees, of the person assuming the burden
6 of proof of propriety of the employment and reasonableness of
7 the compensation shall be determined by the court and paid
8 from the assets of the estate unless the court finds the
9 requested compensation to be substantially unreasonable. The
10 court shall direct from which part of the estate the
11 compensation shall be paid.

12 ~~(3) After notice to all affected interested persons~~
13 ~~and upon petition of an interested person bearing all or part~~
14 ~~of the impact of the payment of compensation to the personal~~
15 ~~representative or any person employed by him or her, the~~
16 ~~propriety of such employment and the reasonableness of such~~
17 ~~compensation or payment may be reviewed by the court. The~~
18 ~~burden of proof of propriety of the such employment and the~~
19 ~~reasonableness of the compensation shall be upon the personal~~
20 ~~representative and the person employed by him or her. Any~~
21 ~~person who is determined to have received excessive~~
22 ~~compensation from an estate for services rendered may be~~
23 ~~ordered to make appropriate refunds.~~

24 (4) The court may determine reasonable compensation
25 for the personal representative or any person employed by the
26 personal representative without receiving expert testimony.
27 Any party may offer expert testimony after notice to
28 interested persons. If expert testimony is offered, a
29 reasonable expert witness fee shall be awarded by the court
30 and paid from the assets of the estate. The court shall direct
31 from what part of the estate the fee shall be paid.

1 Section 136. Section 733.619, Florida Statutes, is
2 amended to read:

3 733.619 Individual liability of personal
4 representative.--

5 (1) Unless otherwise provided in the contract, a
6 personal representative is not individually liable on a
7 contract, except a contract for attorney's fee, properly
8 entered into as ~~in his or her~~ fiduciary capacity in the
9 ~~administration of the estate~~ unless the personal
10 representative fails to reveal that ~~his or her~~ representative
11 capacity and identify the estate in the contract.

12 (2) A personal representative is individually liable
13 for obligations arising from ownership or control of the
14 estate or for torts committed in the course of administration
15 of the estate only if ~~he or she is~~ personally at fault.

16 (3) Claims based on contracts, except a contract for
17 attorney's fee, entered into by a personal representative as a
18 fiduciary ~~in his or her fiduciary capacity~~, on obligations
19 arising from ownership or control of the estate, or on torts
20 committed in the course of estate administration, may be
21 asserted against the estate by proceeding against the personal
22 representative in that ~~his or her fiduciary~~ capacity, whether
23 or not the personal representative is individually liable
24 ~~therefor~~.

25 (4) Issues of liability as between the estate and the
26 personal representative individually may be determined in a
27 proceeding for accounting, surcharge, or indemnification, or
28 other appropriate proceeding.

29 Section 137. Section 733.701, Florida Statutes, is
30 amended to read:

31

1 733.701 Notifying creditors.--Unless creditors' claims
2 are otherwise barred by s. 733.710 ~~the proceedings are under~~
3 ~~chapter 734 or chapter 735~~, every personal representative
4 shall cause notice to creditors of administration to be
5 published and served under s. 733.2121 ~~733.212~~.

6 Section 138. Section 733.702, Florida Statutes, is
7 amended to read:

8 733.702 Limitations on presentation of claims.--

9 (1) If not barred by s. 733.710, no claim or demand
10 against the decedent's estate that arose before the death of
11 the decedent, including claims of the state and any of its
12 subdivisions, even if the claims are unmatured, contingent,
13 ~~whether due or not, direct or contingent, or liquidated or~~
14 ~~unliquidated~~; no claim for funeral or burial expenses; no
15 claim for personal property in the possession of the personal
16 representative; and no claim for damages, including, but not
17 limited to, an action founded on fraud or another wrongful act
18 or omission of the decedent, is binding on the estate, on the
19 personal representative, or on any beneficiary unless filed in
20 the probate proceeding within the later of 3 months after the
21 time of the first publication of the notice to creditors of
22 ~~administration~~ or, as to any creditor required to be served
23 with a copy of the notice to creditors of administration, 30
24 days after the date of service ~~of such copy of the notice~~ on
25 the creditor, even though the personal representative has
26 recognized the claim or demand by paying a part of it or
27 interest on it or otherwise. The personal representative may
28 settle in full any claim without the necessity of the claim
29 being filed when the settlement has been approved by the
30 interested persons ~~beneficiaries adversely affected according~~
31 ~~to the priorities provided in this code and when the~~

1 ~~settlement is made within the statutory time for filing~~
2 ~~claims; or, within 3 months after the first publication of the~~
3 ~~notice of administration, he or she may file a proof of claim~~
4 ~~of all claims he or she has paid or intends to pay.~~

5 (2) No cause of action ~~heretofore or hereafter~~
6 ~~accruing~~, including, but not limited to, an action founded
7 upon fraud or other wrongful act or omission, shall survive
8 the death of the person against whom the claim may be made,
9 whether or not an action is pending at the death of the person
10 ~~or not~~, unless a ~~the~~ claim is filed within the time periods
11 set forth in this part.

12 (3) Any claim not timely filed as provided in this
13 section is barred even though no objection to the claim is
14 ~~filed on the grounds of timeliness or otherwise~~ unless the
15 court extends the time in which the claim may be filed. ~~Such~~
16 An extension may be granted only upon grounds of fraud,
17 estoppel, or insufficient notice of the claims period. No
18 independent action or declaratory action may be brought upon a
19 claim which was not timely filed unless ~~such~~ an extension has
20 been granted by the court. If the personal representative or
21 any other interested person serves on the creditor a notice to
22 file a petition for an extension ~~or be forever barred~~, the
23 creditor shall be limited to a period of 30 days from the date
24 of service of the notice in which to file a petition for
25 extension.

26 (4) Nothing in this section affects or prevents:

27 (a) A proceeding to enforce any mortgage, security
28 interest, or other lien on property of the decedent.

29 (b) To the limits of casualty insurance protection
30 only, any proceeding to establish liability that ~~of the~~

31

1 ~~decedent or the personal representative for which he or she is~~
2 ~~protected by the casualty insurance.~~

3 ~~(c) The filing of a claim by the Department of Revenue~~
4 ~~subsequent to the expiration of the time for filing claims~~
5 ~~provided in subsection (1), provided it does so file within 30~~
6 ~~days after the service of the inventory by the personal~~
7 ~~representative on the department or, in the event an amended~~
8 ~~or supplementary inventory has been prepared, within 30 days~~
9 ~~after the service of the amended or supplementary inventory by~~
10 ~~the personal representative on the department.~~

11 ~~(c)(d)~~ The filing of a cross-claim or counterclaim
12 against the estate in an action instituted by the estate;
13 however, no recovery on ~~such~~ a cross-claim or counterclaim
14 shall exceed the estate's recovery in that ~~such an~~ action.

15 (5) The Department of Revenue may file a claim against
16 the estate of a decedent for taxes due under chapter 199 after
17 the expiration of the time for filing claims provided in
18 subsection (1), if the department files its claim within 30
19 days after the service of the inventory. Upon filing of the
20 estate tax return with the department as provided in s.
21 198.13, or to the extent the inventory or estate tax return is
22 amended or supplemented, the department has the right to file
23 a claim or to amend its previously filed claim within 30 days
24 after service of the estate tax return, or an amended or
25 supplemented inventory or filing of an amended or supplemental
26 estate tax return, as to the additional information disclosed.

27 ~~(6)(5)~~ Nothing in this section shall extend the
28 limitations period set forth in s. 733.710.

29 Section 139. Subsection (2) of section 733.703,
30 Florida Statutes, is amended to read:

31 733.703 Form and manner of presenting claim.--

1 (2) Within the time allowed by s. 733.702, the
2 personal representative may file a proof of claim of all
3 claims he or she has paid or intends to pay.A claimant whose
4 claim is listed in a personal representative's proof of claim
5 ~~filed within 3 months after the first publication of the~~
6 ~~notice of administration~~ shall be deemed to have filed a
7 statement of the claim listed. Except as provided otherwise
8 in this part, the claim shall be treated ~~for all other~~
9 ~~purposes~~ as if it ~~had been filed by the claimant~~ had filed it.

10 Section 140. Section 733.704, Florida Statutes, is
11 amended to read:

12 733.704 Amendment of claims.--If a bona fide attempt
13 to file a claim is made ~~by a creditor~~ but the claim is
14 defective as to form, the court may permit the amendment of
15 the claim at any time.

16 Section 141. Section 733.705, Florida Statutes, is
17 amended to read:

18 733.705 Payment of and objection to claims.--

19 (1) The personal representative shall pay all claims
20 within 1 year from the date of first publication of notice to
21 creditors of administration, provided that the time shall be
22 extended with respect to claims in litigation, unmaturing
23 claims, and contingent claims for the period necessary to
24 dispose of those ~~such~~ claims pursuant to subsections~~(4)~~, (5),
25 (6), ~~and~~ (7), and (8). The court may extend the time for
26 payment of any claim upon a showing of good cause. No
27 personal representative shall be compelled to pay the debts of
28 the decedent until after the expiration of 5 months from the
29 first publication of notice to creditors of administration.
30 If any person brings an action against a personal
31 representative within the 5 months on any claim to which the

1 personal representative has not filed an ~~no~~ objection, the
2 plaintiff shall not receive any costs or attorneys' fees ~~if he~~
3 ~~or she prevails~~, nor shall the judgment change the class of
4 the claim for payment under this code.

5 (2) On or before the expiration of 4 months from the
6 first publication of notice to creditors ~~of administration~~ or
7 within 30 days from the timely filing or amendment of a claim,
8 whichever occurs later, a personal representative or other
9 interested person may file a written objection to a claim. ~~An~~
10 ~~objection to a claim shall contain a statement that the~~
11 ~~claimant is limited to a period of 30 days from the date of~~
12 ~~service of the objection within which to bring an action on~~
13 ~~the claim as provided in subsection (4). The failure to~~
14 ~~include such a statement in the objection shall not affect the~~
15 ~~validity of the objection but may be considered as good cause~~
16 ~~for extending the time for filing an action or proceeding~~
17 ~~after the objection is filed. If an objection is filed, the~~
18 person filing it shall serve a copy of the objection as
19 provided by the Florida Probate Rules ~~by registered or~~
20 ~~certified mail to the address of the claimant or the~~
21 ~~claimant's attorney as shown on the claim or by delivery to~~
22 ~~the claimant to whose claim the person objects or the~~
23 ~~claimant's attorney of record, if any, not later than 10 days~~
24 ~~after the objection has been filed, and also on the personal~~
25 ~~representative if the objection is filed by any interested~~
26 ~~person other than the personal representative. The failure to~~
27 serve a copy of the objection constitutes an abandonment of
28 the objection. For good cause, the court may extend the time
29 for filing or serving an objection to any claim ~~or may extend~~
30 ~~the time for serving the objection. The extension of time~~
31 ~~shall be granted only after notice. Objection to a claim~~

1 constitutes an objection to an amendment of that claim unless
2 the objection is withdrawn.

3 (3) If the objection is filed by a person other than
4 the personal representative, the personal representative may
5 apply to the court for an order relieving him or her from the
6 obligation to defend the estate in an independent action or
7 for the appointment of the objector as administrator ad litem
8 to defend the action. Fees for the attorney for the
9 administrator ad litem may be awarded as provided in s.
10 733.106(3). If costs or attorney's fees are awarded from or
11 against the estate, the probate court may charge or apportion
12 that award as provided in s. 733.106(4).

13 (4)~~(3)~~ An objection by an interested person to a
14 personal representative's proof of claim shall state the
15 particular item or items to which the interested person
16 objects and shall be filed and served as provided in
17 subsection (2). Issues of liability as between the estate and
18 the personal representative individually for items ~~paid by the~~
19 ~~personal representative and thereafter~~ listed in a personal
20 representative's proof of claim shall be determined in the
21 estate administration ~~proceeding~~, in a proceeding for
22 accounting ~~or~~ surcharge, or in another ~~other~~ appropriate
23 proceeding, whether or not an objection has been filed. If an
24 objection to an item listed as to be paid in a personal
25 representative's proof of claim is filed and served, and the
26 personal representative has not paid the item, the other
27 subsections of this section shall apply as if a claim for the
28 item had been filed by the claimant; but if the personal
29 representative has paid the claim after listing it as to be
30 paid, issues of liability as between the estate and the
31

1 personal representative individually shall be determined in
2 the manner provided for an item listed as paid.

3 (5)~~(4)~~ The claimant is limited to a period of 30 days
4 from the date of service of an objection within which to bring
5 an independent action upon the claim, or a declaratory action
6 to establish the validity and amount of an unmatured claim
7 which is not yet due but which is certain to become due in the
8 future, or a declaratory action to establish the validity of a
9 contingent claim upon which no cause of action has accrued on
10 the date of service of an objection and that may or may not
11 become due in the future, unless an extension of this time is
12 agreed to by the personal representative in writing before it
13 expires. For good cause, the court may extend the time for
14 filing an action or proceeding after objection is filed. ~~The~~
15 ~~extension of time shall be granted only after notice.~~No
16 action or proceeding on the claim may ~~shall~~ be brought against
17 the personal representative after the time limited above, and
18 the any such claim is ~~thereafter forever~~ barred without any
19 court order. If an objection is filed to the claim of any
20 creditor and ~~an action is brought by~~ the creditor brings an
21 action to establish the ~~his or her~~ claim, a judgment
22 establishing the claim shall give it no priority over claims
23 of the same class to which it belongs.

24 (6)~~(5)~~ A claimant may bring an independent action or
25 declaratory action upon a claim which was not timely filed
26 pursuant to s. 733.702(1) only if the claimant has been
27 granted an extension of time to file the claim pursuant to s.
28 733.702(3).

29 (7)~~(6)~~ If an unmatured claim has not become due before
30 the time for distribution of an estate, the personal
31 representative may prepay the full amount of principal plus

1 accrued interest due on the claim, without discount and
2 without penalty, regardless of any prohibition against
3 prepayment or provision for penalty in any instrument on which
4 the claim is founded. If the claim is not prepaid, no order
5 of discharge may be entered until the creditor and personal
6 representative have filed an agreement disposing of the claim,
7 or in the absence of an agreement until the court provides for
8 payment by one of the following methods:

9 (a) Requiring the personal representative to reserve
10 such assets as the court determines to be adequate to pay the
11 claim when it becomes due; in fixing the amount to be
12 reserved, the court may determine the value of any security or
13 collateral to which the creditor may resort for payment of the
14 claim and may direct the reservation, if necessary, of
15 sufficient assets to pay the claim or to pay the difference
16 between the value of any security or collateral and the amount
17 necessary to pay the claim. If the estate is insolvent, the
18 court may direct a proportionate amount to be reserved. The
19 court shall direct that the amount reserved be retained by the
20 personal representative until the time that the claim becomes
21 due, and that so much of the reserved amount as is not used
22 for payment be distributed ~~thereafter~~ according to law;

23 (b) Requiring that the claim be adequately secured by
24 a mortgage, pledge, bond, trust, guaranty, or other security,
25 as may be determined by the court, the security to remain in
26 effect until the time ~~that~~ the claim becomes due, and ~~that~~ so
27 much of the security or collateral as is not needed for
28 payment be distributed ~~thereafter~~ according to law; or

29 (c) Making provisions ~~such other provision~~ for the
30 disposition or satisfaction of the claim as are ~~is~~ equitable,
31

1 and in a manner so as not to delay unreasonably the closing of
2 the estate.

3 (8)~~(7)~~ If no cause of action has accrued on a
4 contingent claim before the time for distribution of an
5 estate, no order of discharge may be entered until the
6 creditor and the personal representative have filed an
7 agreement disposing of the claim or, in the absence of an ~~such~~
8 agreement, until:

9 (a) The court determines that the claim is adequately
10 secured or that it has no value,

11 (b) Three months from the date on which a cause of
12 action accrues upon the claim, provided that no action on the
13 claim is then pending,

14 (c) Five years from the date of first publication of
15 notice to creditors ~~of administration~~, or

16 (d) The court provides for payment of the claim upon
17 the happening of the contingency by one of the methods
18 described in paragraph (a), paragraph (b), or paragraph (c) of
19 subsection~~(7)~~(6),

20
21 whichever occurs first. No action or proceeding on the claim
22 may be brought against the personal representative after the
23 time limited above, and the claim is barred without court
24 order. If an objection is filed to the claim of any creditor
25 and the creditor brings an action to establish the claim, a
26 judgment establishing the claim shall give it no priority over
27 claims of the same class to which it belongs ~~No action or~~
28 ~~proceeding may be brought against the personal representative~~
29 ~~on the claim after the time limited above, and any such claim~~
30 ~~shall thereafter be forever barred without order of court. If~~
31 ~~an action is brought within the time limited above, a judgment~~

1 ~~establishing the claim shall give it no priority over claims~~
2 ~~of the same class to which it belongs.~~

3 ~~(9)(8) No interest shall be paid by the personal~~
4 ~~representative or allowed by the court on a claim until the~~
5 ~~expiration of 5 calendar months from the first publication of~~
6 ~~the notice of administration, unless the claim is founded on a~~
7 ~~written obligation of the decedent providing for the payment~~
8 ~~of interest. Interest shall be paid by the personal~~
9 representative on written obligations of the decedent
10 providing for the payment of interest. On all other claims,
11 interest shall be allowed and paid beginning 5 months from the
12 first publication of the notice to creditors of
13 administration.

14 ~~(10)(9) The court may determine all issues concerning~~
15 claims or matters not requiring trial by jury.

16 ~~(11)(10) An order for extension of time authorized~~
17 under this section may be entered only in the estate
18 administration proceeding.

19 Section 142. Section 733.707, Florida Statutes, is
20 amended to read:

21 733.707 Order of payment of expenses and
22 obligations.--

23 (1) The personal representative shall pay the expenses
24 of the administration and obligations of the decedent's estate
25 in the following order:

26 (a) Class 1.--Costs, expenses of administration, and
27 compensation of personal representatives and their attorneys
28 ~~attorneys' fees~~ and attorneys fees awarded under s.
29 733.106(3).

30 (b) Class 2.--Reasonable funeral, interment, and grave
31 marker expenses, whether paid by a guardian ~~under s.~~

1 ~~744.441(16)~~, the personal representative, or any other person,
2 not to exceed the aggregate of \$6,000.

3 (c) Class 3.--Debts and taxes with preference under
4 federal law, and claims pursuant to ss. 409.9101 and 414.28.

5 (d) Class 4.--Reasonable and necessary medical and
6 hospital expenses of the last 60 days of the last illness of
7 the decedent, including compensation of persons attending the
8 decedent ~~him or her~~.

9 (e) Class 5.--Family allowance.

10 (f) Class 6.--Arrearage from court-ordered child
11 support.

12 (g) Class 7.--Debts acquired after death by the
13 continuation of the decedent's business, in accordance with s.
14 733.612(22), but only to the extent of the assets of that
15 business.

16 (h) Class 8.--All other claims, including those
17 founded on judgments or decrees rendered against the decedent
18 during the decedent's lifetime, and any excess over the sums
19 allowed in paragraphs (b) and (d).

20 (2) After paying any preceding class, if the estate is
21 insufficient to pay all of the next succeeding class, the
22 creditors of the latter class shall be paid ratably in
23 proportion to their respective claims.

24 (3) Any portion of a trust with respect to which a
25 decedent who is the grantor has at the decedent's death a
26 right of revocation, as defined in paragraph (e), either alone
27 or in conjunction with any other person, is liable for the
28 expenses of the administration and obligations of the
29 decedent's estate ~~and enforceable claims of the decedent's~~
30 ~~creditors~~ to the extent the decedent's estate is insufficient
31 to pay them as provided in s. 733.607(2).

1 (a) For purposes of this subsection, any trusts
2 established as part of, and all payments from, either an
3 employee annuity described in s. 403 of the Internal Revenue
4 Code of 1986, as amended, an Individual Retirement Account, as
5 described in s. 408 of the Internal Revenue Code of 1986, as
6 amended, a Keogh (HR-10) Plan, or a retirement or other plan
7 established by a corporation which is qualified under s. 401
8 of the Internal Revenue Code of 1986, as amended, shall not be
9 considered a trust over which the decedent has a right of
10 revocation.

11 (b) For purposes of this subsection, any trust
12 described in s. 664 of the Internal Revenue Code of 1986, as
13 amended, shall not be considered a trust over which the
14 decedent has a right of revocation.

15 (c) This subsection shall not impair any rights an
16 individual has under a qualified domestic relations order as
17 that term is defined in s. 414(p) of the Internal Revenue Code
18 of 1986, as amended.

19 (d) For purposes of this subsection, property held or
20 received by a trust to the extent that the property would not
21 have been subject to claims against the decedent's estate if
22 it had been paid directly to a trust created under the
23 decedent's will or other than to the decedent's estate, or
24 assets received from any trust other than a trust described in
25 this subsection, shall not be deemed assets of the trust
26 available to ~~for the payment of the expenses of administration~~
27 ~~of and enforceable claims against~~ the decedent's estate.

28 (e) For purposes of this subsection, a "right of
29 revocation" is a power retained by the decedent, held in any
30 capacity, to:

31

1 1. Amend or revoke the trust and revest the principal
2 of the trust in the decedent; or

3 2. Withdraw or appoint the principal of the trust to
4 or for the decedent's benefit.

5 Section 143. Section 733.708, Florida Statutes, is
6 amended to read:

7 733.708 Compromise.--When a proposal is made to
8 compromise any claim, whether in suit or not, by or against
9 the estate of a decedent or to compromise any question
10 concerning the distribution of a decedent's estate, the court
11 may enter an order authorizing the compromise if satisfied
12 that the compromise will be for the best interest of the
13 interested persons ~~beneficiaries~~. The order shall relieve the
14 personal representative of liability or responsibility for the
15 compromise. Claims against the estate may not be compromised
16 until after the time for filing objections to claims has
17 expired. ~~Notice must be given to those who have filed~~
18 ~~objection to the claim proposed to be compromised.~~

19 Section 144. Subsection (1) of section 733.710,
20 Florida Statutes, is amended to read:

21 733.710 Limitations on claims against estates.--

22 (1) Notwithstanding any other provision of the code, 2
23 years after the death of a person, neither the decedent's
24 estate, the personal representative, (if any), nor the
25 beneficiaries shall be liable for any claim or cause of action
26 against the decedent, whether or not letters of administration
27 have been issued, except as provided in this section.

28 Section 145. Section 733.801, Florida Statutes, is
29 amended to read:

30 733.801 Delivery of devises and distributive shares.--

31

1 (1) No personal representative shall be required to
2 pay or deliver any devise or distributive share or to
3 surrender possession of any land to any beneficiary until the
4 expiration of 5 months from the granting of letters.

5 (2) Except as otherwise provided in the will, the
6 personal representative shall pay as an expense of
7 administration the reasonable expenses of storage, insurance,
8 packing, and delivery of tangible personal property to a
9 beneficiary.

10 Section 146. Subsections (1) and (2) of section
11 733.802, Florida Statutes, are amended to read:

12 733.802 Proceedings for compulsory payment of devises
13 or distributive interest.--

14 (1) Before final distribution, no personal
15 representative shall be compelled:

16 (a) To pay a devise in money before the final
17 settlement of the personal representative's ~~his or her~~
18 accounts,

19 (b) To deliver specific personal property devised ~~that~~
20 ~~may have come into his or her hands~~, unless the personal
21 property is exempt personal property,

22 (c) To pay all or any part of a distributive share in
23 the personal estate of a decedent, or

24 (d) To surrender land to any beneficiary,

25
26 unless the beneficiary establishes ~~files a petition setting~~
27 ~~forth the facts that entitle him or her to relief and stating~~
28 that the property will not be required for the payment of
29 debts, family allowance, estate and inheritance taxes, claims,
30 elective share of the surviving spouse, charges, or expenses
31 of administration or to provide ~~for providing~~ funds for

1 contribution or to enforce ~~enforcing~~ equalization in case of
2 advancements.

3 (2) An order directing the surrender of real property
4 or the delivery of personal property by the personal
5 representative to the beneficiary ~~shall describe the property~~
6 ~~to be surrendered or delivered.~~ The order shall be conclusive
7 in favor of bona fide purchasers for value from the
8 beneficiary or distributee as against the personal
9 representative and all other persons claiming by, through,
10 under, or against the decedent or the decedent's estate.

11 Section 147. Section 733.803, Florida Statutes, is
12 amended to read:

13 733.803 Encumbered property; liability for
14 payment.--The specific devisee of any encumbered property
15 shall be entitled to have the encumbrance on devised property
16 paid at the expense of the residue of the estate only when the
17 will shows that ~~such an~~ intent. A general direction in the
18 will to pay debts does not show that ~~such an~~ intent.

19 Section 148. Section 733.805, Florida Statutes, is
20 amended to read:

21 733.805 Order in which assets abate ~~are~~
22 ~~appropriated.~~--

23 (1) ~~If a testator makes provision by his or her will,~~
24 ~~or designates the~~ Funds or property designated by the will
25 shall ~~to be used, to pay for the payment of debts, estate and~~
26 ~~inheritance taxes,~~ family allowance, exempt property, elective
27 share charges, expenses of administration, and devises, to the
28 extent the funds or property are ~~they shall be paid out of the~~
29 ~~funds or from the property or proceeds as provided by the will~~
30 ~~so far as~~ sufficient. If no provision is made or the
31 designated any fund or property ~~designated,~~ or if it is

1 insufficient, the funds and property of the estate shall be
2 used for these such purposes, ~~except as otherwise provided in~~
3 ~~s. 733.817 with respect to estate, inheritance, and other~~
4 ~~death taxes,~~ and to raise the shares of a pretermitted spouse
5 and children, except as otherwise provided in subsections (3)
6 and (4), in the following order:
7 (a) Property passing by intestacy ~~not disposed of by~~
8 ~~the will.~~
9 (b) Property devised to the residuary devisee or
10 devisees.
11 (c) Property not specifically or demonstratively
12 devised.
13 (d) Property specifically or demonstratively devised.
14 (2) Demonstrative devises shall be classed as general
15 devises upon the failure or insufficiency of funds or property
16 out of which payment should be made, to the extent of the
17 insufficiency. Devises to the decedent's surviving spouse,
18 given in satisfaction of, or instead of, the surviving
19 spouse's statutory rights in the estate, shall not abate until
20 other devises of the same class are exhausted. Devises given
21 for a valuable consideration shall abate with other devises of
22 the same class only to the extent of the excess over the
23 amount of value of the consideration until all others of the
24 same class are exhausted. Except as herein provided, devises
25 shall abate equally and ratably and without preference or
26 priority as between real and personal property. When property
27 that has been specifically devised or charged with a devise is
28 sold or used ~~taken~~ by the personal representative, other
29 devisees shall contribute according to their respective
30 interests to the devisee whose devise has been sold or used
31 taken, ~~and before distribution the court shall determine~~ The

1 amounts of the respective contributions shall be determined by
2 the court, and ~~they~~ shall be paid or withheld before
3 distribution is made.

4 (3) Section 733.817 shall be applied before this
5 section is applied.

6 (4) In determining the contribution required under s.
7 733.607(2), subsections (1)-(3) of this section and s.
8 737.3054(2) shall be applied as if the beneficiaries of the
9 estate and the beneficiaries of a trust described in s.
10 733.707(3), other than the estate or trust itself, were taking
11 under a common instrument.

12 Section 149. Section 733.806, Florida Statutes, is
13 amended to read:

14 733.806 Advancement.--If a person dies intestate ~~as to~~
15 ~~all his or her estate~~, property that the decedent gave during
16 ~~in his or her~~ lifetime to an heir is treated as an advancement
17 against the heir's ~~latter's~~ share of the estate only if
18 declared in a contemporaneous writing by the decedent or
19 acknowledged in writing by the heir. The property advanced
20 shall be valued at the time the heir came into possession or
21 enjoyment of the property or at the time of the death of the
22 decedent, whichever first occurs. If the recipient of the
23 property does not survive the decedent, the property shall not
24 be taken into account in computing the intestate share to be
25 received by the recipient's descendants unless the declaration
26 or acknowledgment provides otherwise.

27 Section 150. Subsections (3), (4), (5), and (6) of
28 section 733.808, Florida Statutes, are amended to read:

29 733.808 Death benefits; disposition of proceeds.--

30 (3) In the event no trustee makes proper claim to the
31 proceeds from the insurance company or other obligor within a

1 period of 6 months after the date of the death of the insured,
2 employee, or annuitant, or if satisfactory evidence is
3 furnished to the insurance company or ~~such~~ obligor within that
4 period that there is, or will be, no trustee to receive the
5 proceeds, payment shall be made by the insurance company or
6 obligor to the personal representative of the person making
7 the ~~such~~ designation, unless otherwise provided by agreement
8 with the insurer or ~~other~~ obligor during the lifetime of the
9 insured, employee, or annuitant.

10 (4) Death benefits payable as provided in subsection
11 (1), subsection (2), or subsection (3), unless paid to a
12 personal representative under the provisions of subsection
13 (3), shall not be deemed to be part of the decedent's estate
14 ~~of the testator or an intestate estate~~, and shall not be
15 subject to any obligation to pay the expenses of the
16 administration and obligations of the decedent's estate or for
17 contribution required from a trust under s. 733.607(2)
18 ~~transfer or estate taxes, debts, or other charges enforceable~~
19 ~~against the estate~~ to any greater extent than if the ~~such~~
20 proceeds were payable directly to the beneficiaries named in
21 the trust.

22 (5) The death benefits ~~so~~ held in trust may be
23 commingled with any other assets that may properly come into
24 the trust.

25 (6) Nothing in this section shall affect the validity
26 of any designation of a beneficiary of proceeds previously
27 ~~heretofore~~ made that designates as beneficiary the trustee of
28 any trust established under a trust agreement or declaration
29 of trust or by will.

30 Section 151. Section 733.809, Florida Statutes, is
31 amended to read:

1 733.809 Right of retainer.--The amount of a
2 noncontingent indebtedness due from ~~of~~ a beneficiary to the
3 estate, ~~if due,~~ or its present value, if not due, may be
4 offset against that ~~the~~ beneficiary's interest. However, that,
5 ~~but the~~ beneficiary shall have ~~has~~ the benefit of any defense
6 that would be available ~~to him or her~~ in a direct proceeding
7 for recovery of the debt.

8 Section 152. Section 733.810, Florida Statutes, is
9 amended to read:

10 733.810 Distribution in kind; valuation.--

11 (1) Assets shall be distributed in kind unless:

12 (a) A general power of sale is conferred;

13 (b) A contrary intention is indicated by the will or
14 trust; or

15 (c) Disposition is made otherwise under the provisions
16 of this code.~~Unless a general power of sale is conferred or a~~
17 ~~contrary intention is indicated by the will or unless assets~~
18 ~~are otherwise disposed of under the provisions of this code,~~
19 ~~the distributable assets of a decedent's estate shall be~~
20 ~~distributed in kind through application of the following~~
21 ~~provisions:~~

22 (2)(a) Any pecuniary devise, family allowance, or
23 other pecuniary share of the estate or trust or devise payable
24 in money may be satisfied by value in kind if:

25 (a)1. The person entitled to ~~the~~ payment has not
26 demanded cash;

27 (b)2. The property is ~~distributed in kind is valued~~ at
28 fair market value as ~~of the date~~ of its distribution date; and

29 (c)3. No residuary devisee has requested that the
30 asset remain a part of the residuary ~~residue of the~~ estate.

31

1 ~~(3)(b)~~ When ~~it is~~ not practicable to distribute
2 undivided interests in a residuary asset property, the asset
3 may property shall be sold converted into cash for
4 distribution.

5 ~~(4)(2)~~ When the ~~personal representative, trustee, or~~
6 ~~other~~ fiduciary under a will or trust instrument is required
7 ~~to, or has an option, to, satisfy a pecuniary devise or~~
8 ~~transfer in trust, to, or for the benefit of, the surviving~~
9 ~~spouse, with an in-kind distribution assets of the estate or~~
10 ~~trust in kind~~, at values as finally determined for federal
11 estate tax purposes, the ~~personal representative, trustee, or~~
12 ~~other~~ fiduciary shall, unless the governing will or trust
13 instrument otherwise provides, satisfy the devise or transfer
14 in trust by distribution of assets, including cash, fairly
15 representative of the appreciated or depreciated value of all
16 property available for that distribution ~~in satisfaction of~~
17 ~~the devise or transfer in trust~~, taking into consideration any
18 gains and losses realized from a prior ~~the sale, prior to~~
19 ~~distribution of the marital interest, of any property not~~
20 devised specifically, generally, or demonstratively devised.

21 ~~(5)(3)~~ ~~With the consent of all beneficiaries affected,~~
22 A personal representative or a trustee is authorized to
23 distribute any distributable assets, non-pro rata among the
24 beneficiaries subject to the fiduciary's duty of impartiality
25 ~~entitled thereto~~.

26 Section 153. Section 733.811, Florida Statutes, is
27 amended to read:

28 733.811 Distribution; right or title of
29 distributee.--If a distributee receives from a fiduciary an
30 instrument transferring assets in kind, payment in
31 distribution, or possession of specific property, the

1 distributee has succeeded to the estate's interest in the
2 assets as against all persons interested in the estate.
3 However, the fiduciary may recover the assets or their value
4 if the distribution was improper ~~Proof that a distributee has~~
5 ~~received an instrument transferring assets in kind or payment~~
6 ~~in distribution or possession of specific property from a~~
7 ~~personal representative is conclusive evidence that the~~
8 ~~distributee has succeeded to the interest of the estate in the~~
9 ~~distributed assets, as against all persons interested in the~~
10 ~~estate, but the personal representative may recover the assets~~
11 ~~or their value if the distribution was improper.~~

12 Section 154. Section 733.812, Florida Statutes, is
13 amended to read:

14 733.812 Improper distribution or payment; liability of
15 distributee or payee. ~~--Unless the distribution or payment no~~
16 ~~longer can be questioned because of adjudication, estoppel, or~~
17 ~~limitations, A distributee of property improperly distributed~~
18 ~~or paid or a claimant who was paid improperly must paid, if he~~
19 ~~or she has the property, is liable to return the assets or~~
20 ~~funds property improperly received, and the income from those~~
21 ~~assets or interest on the funds its income since distribution~~
22 ~~or payment, unless the distribution or payment cannot be~~
23 ~~questioned because of adjudication, estoppel, or limitations~~
24 ~~to the personal representative or to the beneficiaries~~
25 ~~entitled to it. If the distributee or claimant he or she does~~
26 ~~not have the property, its then he or she is liable to return~~
27 ~~the value of the property improperly received at the date of~~
28 ~~disposition, and its income thereon, and gain received by the~~
29 ~~distributee or claimant must be returned him or her.~~

30 Section 155. Section 733.813, Florida Statutes, is
31 amended to read:

1 733.813 Purchasers from distributees protected.--If
2 property distributed in kind, or a security interest in that
3 property therein, is acquired by a purchaser or lender for
4 value from a distributee ~~who has received an instrument of~~
5 ~~distribution or possession from the personal representative,~~
6 the purchaser or lender takes title free of any claims of the
7 estate and incurs no personal liability to the estate, whether
8 or not the distribution was proper. The ~~To be protected under~~
9 ~~this provision~~ a purchaser or lender need not inquire whether
10 a personal representative acted properly in making the
11 distribution in kind.

12 Section 156. Section 733.814, Florida Statutes, is
13 amended to read:

14 733.814 Partition for purpose of distribution.--When
15 two or more beneficiaries heirs or devisees are entitled to
16 distribution of undivided interests in any property, the
17 personal representative or any beneficiary ~~one or more of the~~
18 ~~beneficiaries~~ may petition the court before ~~closing~~ the estate
19 is closed to make partition. ~~After formal notice to the~~
20 ~~interested beneficiaries, the court shall~~ partition the
21 property in the same manner as provided by law for civil
22 actions of partition. The court may direct the personal
23 representative to sell any property that cannot be partitioned
24 without prejudice to the owners and that cannot be allotted
25 equitably and conveniently ~~be allotted to any one party.~~

26 Section 157. Section 733.815, Florida Statutes, is
27 amended to read:

28 733.815 Private contracts agreements among interested
29 persons distributees.--Subject to the rights of creditors and
30 taxing authorities, ~~competent~~ interested persons may agree
31 among themselves to alter the interests, shares, or amounts to

1 which they are entitled ~~under the will or under the laws of~~
2 ~~intestacy~~ in a written contract executed by them ~~all who are~~
3 ~~affected~~. The personal representative shall abide by the terms
4 of the contract agreement, subject to the personal
5 representative's ~~his or her~~ obligation to administer the
6 estate for the benefit of interested persons who are not
7 parties to the contract, and creditors, to pay ~~all taxes and~~
8 ~~costs of administration, and to carry out the responsibilities~~
9 ~~of his or her office for the benefit of any beneficiaries of~~
10 ~~the decedent who are not parties to the agreement. Personal~~
11 ~~representatives are not required to see to the performance of~~
12 ~~trusts if the trustee is another person who is willing to~~
13 ~~accept the trust~~. Trustees of a testamentary trust are
14 interested persons beneficiaries for the purposes of this
15 section. Nothing in this section ~~herein~~ relieves trustees of
16 any duties owed to beneficiaries of trusts.

17 Section 158. Section 733.816, Florida Statutes, is
18 amended to read:

19 733.816 Disposition of unclaimed property held by
20 personal representatives.--

21 (1) In all cases in which there is unclaimed property
22 in the hands of a personal representative that cannot be
23 distributed or paid because of the inability to find the
24 ~~lawful owner because of inability to find him or her or~~
25 ~~because no lawful owner is known~~ or because the lawful owner
26 refuses to accept the property after a reasonable attempt to
27 distribute it and after notice to that lawful owner, the court
28 shall order the personal representative to sell the property
29 and deposit the proceeds and cash already in hand, after
30 retaining those amounts provided for in subsection (4), with
31 the clerk and receive a receipt, and the clerk shall deposit

1 the funds in the registry of the court to be disposed of as
2 follows:

3 (a) If the value of the funds is \$500 or less, the
4 clerk shall post a notice for 30 days at the courthouse door
5 giving the amount involved, the name of the personal
6 representative, and the other pertinent information that will
7 put interested persons on notice.

8 (b) If the value of the funds is over \$500, the clerk
9 shall publish the notice once a month for 2 consecutive months
10 in a newspaper of general circulation in the county.

11

12 After the expiration of 6 months from the posting or first
13 publication, the clerk shall deposit the funds with the State
14 Treasurer after deducting the clerk's ~~his or her~~ fees and the
15 costs of publication.

16 (2) Upon receipt of the funds, the State Treasurer
17 shall deposit them to the credit of the State School Fund, to
18 become a part of the school fund. All interest and all income
19 that may accrue from the money while so deposited shall belong
20 to the fund. The funds so deposited shall constitute and be a
21 permanent appropriation for payments by the State Treasurer in
22 obedience to court orders entered as provided by subsection
23 (3).

24 (3) Within 10 years from the date of deposit with the
25 State Treasurer, on written petition to the court that
26 directed the deposit of the funds and informal notice to the
27 Department of Legal Affairs, and after proof of entitlement
28 ~~his or her right to them~~, any person entitled to the funds
29 before or after payment to the State Treasurer and deposit as
30 provided by subsection (1) may obtain a court ~~an~~ order of
31 ~~court~~ directing the payment of the funds to that person ~~him or~~

1 ~~her~~. All funds deposited with the State Treasurer and not
2 claimed within 10 years from the date of deposit shall escheat
3 to the state for the benefit of the State School Fund.

4 (4) The personal representative depositing assets with
5 the clerk is permitted to retain from the funds ~~in his or her~~
6 ~~possession~~ a sufficient amount to pay final costs of
7 administration chargeable to the assets, ~~including fees~~
8 ~~allowed pursuant to s. 733.617~~ accruing between the deposit of
9 the funds with the clerk of the court and the order of
10 discharge. Any funds so retained which are surplus shall be
11 deposited with the clerk prior to discharge of the personal
12 representative.

13 (5)(a) If a person entitled to the funds assigns the
14 right ~~his or her rights~~ to receive payment or part payment to
15 an attorney or private investigative agency which is duly
16 licensed to do business in this state pursuant to a written
17 agreement with that ~~such~~ person, the Department of Banking and
18 Finance is authorized to make distribution in accordance with
19 the ~~such~~ assignment.

20 (b) Payments made to an attorney or private
21 investigative agency shall be promptly deposited into a trust
22 or escrow account which is regularly maintained by the
23 attorney or private investigative agency in a financial
24 institution located in this state and authorized to accept
25 these ~~such~~ deposits ~~and located in this state~~.

26 (c) Distribution by the attorney or private
27 investigative agency to the person entitled to the funds shall
28 be made within 10 days following final credit of the deposit
29 into the trust or escrow account at the financial institution,
30 unless a party to the agreement protests the distribution in
31 writing ~~such distribution~~ before it is made.

1 (d) The department shall not be civilly or criminally
2 liable for any funds distributed pursuant to this subsection,
3 provided the ~~such~~ distribution is made in good faith.

4 Section 159. Subsections (1) and (2), paragraph (a) of
5 subsection (4), paragraph (c) of subsection (5), subsection
6 (6), paragraph (a) of subsection (7), and subsection (11) of
7 section 733.817, Florida Statutes, are amended to read:

8 733.817 Apportionment of estate taxes.--

9 (1) For purposes of this section:

10 (a) "Fiduciary" means a person other than the personal
11 representative in possession of property included in the
12 measure of the tax who is liable to the applicable taxing
13 authority for payment of the entire tax to the extent of the
14 value of the property in ~~his or her~~ possession.

15 (b) "Governing instrument" means a will, trust
16 agreement, or any other document that controls the transfer of
17 an asset on the occurrence of the event with respect to which
18 the tax is being levied.

19 (c) "Gross estate" means the gross estate, as
20 determined by the Internal Revenue Code with respect to the
21 federal estate tax and the Florida estate tax, and as that
22 ~~such~~ concept is otherwise determined by the estate,
23 inheritance, or death tax laws of the particular state,
24 country, or political subdivision whose tax is being
25 apportioned.

26 (d) "Included in the measure of the tax" means that
27 for each separate tax that an interest may incur, only
28 interests included in the measure of that particular tax are
29 considered. The term "included in the measure of the tax" does
30 not include any interest, whether passing under the will or
31 not, to the extent the interest is initially deductible from

1 the gross estate, without regard to any subsequent reduction
2 ~~diminution~~ of the deduction by reason of the charge of any
3 part of the applicable tax to the interest. The term "included
4 in the measure of the tax" does not include interests or
5 amounts that are not included in the gross estate but are
6 included in the amount upon which the applicable tax is
7 computed, such as adjusted taxable gifts with respect to the
8 federal estate tax. If an election is required for
9 deductibility, an interest is not "initially deductible"
10 unless the election for deductibility is allowed.

11 (e) "Internal Revenue Code" means the Internal Revenue
12 Code of 1986, as amended from time to time.

13 (f) "Net tax" means the net tax payable to the
14 particular state, country, or political subdivision whose tax
15 is being apportioned, after taking into account all credits
16 against the applicable tax except as provided in this section.
17 With respect to the federal estate tax, "net tax" is
18 determined after taking into account all credits against the
19 tax except for the credit for foreign death taxes.

20 (g) "Nonresiduary devise" means any devise that is not
21 a residuary devise.

22 (h) "Nonresiduary interest" in connection with a trust
23 means any interest in a trust which is not a residuary
24 interest.

25 (i) "Recipient" means, with respect to property or an
26 interest in property included in the gross estate, an heir at
27 law in an intestate estate, devisee in a testate estate,
28 beneficiary of a trust, beneficiary of an insurance policy,
29 annuity, or other contractual right, surviving tenant, taker
30 as a result of the exercise or in default of the exercise of a
31 general power of appointment, person who receives or is to

1 receive the property or an interest in the property, or person
2 in possession of the property, other than a creditor.

3 (j) "Residuary devise" has the meaning set forth in s.
4 731.201(31)~~(30)~~.

5 (k) "Residuary interest," in connection with a trust,
6 means an interest in the assets of a trust which remain after
7 provision for any distribution that is to be satisfied by
8 reference to a specific property or type of property, fund,
9 sum, or statutory amount.

10 (l) "Revocable trust" means a trust as described in s.
11 733.707(3)~~as defined in s. 731.201(33) created by the~~
12 ~~decendent to the extent that the decendent had at his or her~~
13 ~~death the power to alter, amend, or revoke the trust either~~
14 ~~alone or in conjunction with any other person.~~

15 (m) "State" means any state, territory, or possession
16 of the United States, the District of Columbia, and the
17 Commonwealth of Puerto Rico.

18 (n) "Tax" means any estate tax, inheritance tax,
19 generation skipping transfer tax, or other tax levied or
20 assessed under the laws of this or any other state, the United
21 States, any other country, or any political subdivision of the
22 foregoing, as finally determined, which is imposed as a result
23 of the death of the decedent, including, without limitation,
24 the tax assessed pursuant to s. 4980A of the Internal Revenue
25 Code. The term also includes any interest and penalties
26 imposed in addition to the tax. Unless the context indicates
27 otherwise, the term "tax" means each separate tax.

28 (o) "Temporary interest" means an interest in income
29 or an estate for a specific period of time or for life or for
30 some other period controlled by reference to extrinsic events,
31 whether or not in trust.

1 (p) "Tentative Florida tax" with respect to any
2 property means the net Florida estate tax that would have been
3 attributable to that property if no tax were payable to any
4 other state in respect of that property.

5 (q) "Value" means the pecuniary worth of the interest
6 involved as finally determined for purposes of the applicable
7 tax after deducting any debt, expense, or other deduction
8 chargeable to it for which a deduction was allowed in
9 determining the amount of the applicable tax. A lien or other
10 encumbrance is not regarded as chargeable to a particular
11 interest to the extent that it will be paid from other
12 interests. The value of an interest shall not be reduced by
13 reason of the charge against it of any part of the tax.

14 (2) An interest in protected homestead ~~property~~ shall
15 be exempt from the apportionment of taxes ~~if such interest~~
16 ~~passes to a person to whom inures the decedent's exemption~~
17 ~~from forced sale under the State Constitution.~~

18 (4)(a) Except as otherwise effectively directed by the
19 governing instrument, if the Internal Revenue Code including,
20 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,
21 and 2603, ~~of the Internal Revenue Code~~ applies to apportion
22 federal tax against recipients of certain interests, all net
23 taxes, including taxes levied by the state attributable to
24 each type of interest, shall be apportioned against the
25 recipients of all interests of that type in the proportion
26 that the value of each interest of that type included in the
27 measure of the tax bears to the total of all interests of that
28 type included in the measure of the tax.

29 (5) Except as provided above or as otherwise directed
30 by the governing instrument, the net tax attributable to each
31 interest shall be apportioned as follows:

1 (c) The net tax attributable to an interest in
2 protected homestead property ~~which is exempt from~~
3 ~~apportionment pursuant to subsection (2)~~ shall be apportioned
4 against the recipients of other interests in the estate or
5 passing under any revocable trust in the following order:
6 1. Class I: Recipients of interests not disposed of
7 by the decedent's will or revocable trust that ~~which~~ are
8 included in the measure of the federal estate tax.
9 2. Class II: Recipients of residuary devises and
10 residuary interests that are included in the measure of the
11 federal estate tax.
12 3. Class III: Recipients of nonresiduary devises and
13 nonresiduary interests that are included in the measure of the
14 federal estate tax. The net tax apportioned to a class, if
15 any, pursuant to this paragraph shall be apportioned among the
16 recipients in the class in the proportion that the value of
17 the interest of each bears to the total value of all interests
18 included in that class.
19 (6) The personal representative or fiduciary shall not
20 be required to transfer to a recipient any property ~~in~~
21 ~~possession of the personal representative or fiduciary which~~
22 ~~he or she~~ reasonably anticipated to anticipate ~~may be~~
23 necessary for the payment of taxes. Further, the personal
24 representative or fiduciary shall not be required to transfer
25 any property ~~in possession of the personal representative or~~
26 ~~fiduciary~~ to the recipient until the amount of the tax due
27 from the recipient is paid by the recipient. If property is
28 transferred before final apportionment of the tax, the
29 recipient shall provide a bond or other security for his or
30 her apportioned liability in the amount and form prescribed by
31 the personal representative or fiduciary.

1 (7)(a) The personal representative may petition at any
2 time for an order of apportionment. If no administration has
3 been commenced at any time after 90 days from the decedent's
4 death any fiduciary may petition for an order of apportionment
5 in the court in which venue would be proper for administration
6 of the decedent's estate. Formal notice of the petition for
7 order of apportionment shall be given to all interested
8 persons. At any time after 6 months from the decedent's death,
9 any recipient may petition the ~~such~~ court for an order of
10 apportionment.

11 (11) Nothing in this section shall limit the right of
12 any person who has paid more than the amount of the tax
13 apportionable to that ~~such~~ person, calculated as if all
14 apportioned amounts would be collected, to obtain contribution
15 from those who have not paid the full amount of the tax
16 apportionable to them, calculated as if all apportioned
17 amounts would be collected, and that right is hereby
18 conferred. In any action to enforce contribution, the court
19 shall award taxable costs as in chancery actions, including
20 reasonable attorney's fees.

21 Section 160. Section 733.901, Florida Statutes, is
22 amended to read:

23 733.901 ~~Distribution~~Final discharge.--

24 (1) After administration has been ~~When a personal~~
25 ~~representative has~~ completed the personal representative shall
26 be discharged ~~administration except for distribution, he or~~
27 ~~she shall file a final accounting and a petition for discharge~~
28 ~~that shall contain:~~

29 ~~(a) A complete report of all receipts and~~
30 ~~disbursements since the date of the last annual accounting or,~~
31 ~~if none, from the commencement of administration.~~

1 ~~(b) A statement that he or she has fully administered~~
2 ~~the estate by making payment, settlement, or other disposition~~
3 ~~of all claims and debts that were presented and the expenses~~
4 ~~of administration.~~

5 ~~(c) The proposed distribution of the assets of the~~
6 ~~estate.~~

7 ~~(d) Any prior distributions that have been made.~~

8 ~~(e) A statement that objections to this report or~~
9 ~~proposed distribution of assets be filed within 30 days.~~

10
11 ~~The final accounting and petition for discharge shall be filed~~
12 ~~and served on all interested persons within 12 months after~~
13 ~~issuance of letters for estates not required to file a federal~~
14 ~~estate tax return, otherwise 12 months from the date the~~
15 ~~return is due, unless the time is extended by the court for~~
16 ~~cause shown after notice to interested persons. The petition~~
17 ~~shall state the status of the estate and the reasons for the~~
18 ~~extension.~~

19 ~~(2) If no objection to the accounting or petition for~~
20 ~~discharge has been filed within 30 days from the date of~~
21 ~~service of copies on interested persons, or if service has~~
22 ~~been waived, the personal representative may distribute the~~
23 ~~estate according to the plan of distribution set forth in the~~
24 ~~petition without a court order. The assets shall be~~
25 ~~distributed free from the claims of any interested person and,~~
26 ~~upon receipt of evidence that the estate has been properly~~
27 ~~distributed and that claims of creditors have been paid or~~
28 ~~otherwise disposed of, the court shall enter an order~~
29 ~~discharging the personal representative and releasing the~~
30 ~~surety on any bond.~~

31

1 ~~(3) If an objection to the petition for discharge has~~
2 ~~been filed within the time allowed, the court shall determine~~
3 ~~the plan of distribution and, upon receipt of evidence that~~
4 ~~the estate has been properly distributed and that claims of~~
5 ~~creditors have been paid or otherwise disposed of, the court~~
6 ~~shall enter an order discharging the personal representative~~
7 ~~and releasing the surety on any bond.~~

8 ~~(4) The final accounting required under subsection (1)~~
9 ~~may be waived upon a filing of a consent waiver with the~~
10 ~~court, by all interested persons, acknowledging that they are~~
11 ~~aware of their rights and that they waive the right to have a~~
12 ~~final accounting.~~

13 ~~(5) The 30-day period contained in subsection (2) may~~
14 ~~be waived upon written consent of all interested persons.~~

15 (2)~~(6)~~ The discharge of the personal representative
16 shall release the personal representative ~~of the estate~~ and
17 shall bar any action against the personal representative, as
18 such or individually, and the ~~his or her~~ surety.

19 Section 161. Section 733.903, Florida Statutes, is
20 amended to read:

21 733.903 Subsequent administration.--The final
22 settlement of an estate and the discharge of the personal
23 representative shall not prevent ~~a revocation of the order of~~
24 ~~discharge or the subsequent issuance of letters if other~~
25 ~~property of the estate is discovered or if it becomes~~
26 ~~necessary that further administration of the estate be had for~~
27 ~~any cause. However,~~The order of discharge may not be revoked
28 ~~under this section~~ based upon the discovery of a will or later
29 will.

30 Section 162. Subsections (3) and (4) of section
31 734.101, Florida Statutes, are amended to read:

1 734.101 Foreign personal representative.--

2 (3) Debtors who have not received a written demand for
3 payment from a personal representative or curator appointed in
4 this state within 60 days after appointment of a personal
5 representative in any other state or country, and whose
6 property in Florida is subject to a mortgage or other lien
7 securing the debt held by the foreign personal representative,
8 may pay the foreign personal representative after the
9 expiration of 60 days from the date of ~~his or her~~ appointment
10 of the foreign personnel representative. Thereafter, a
11 satisfaction of the mortgage or lien executed by the foreign
12 personal representative, with an authenticated copy of the his
13 ~~or her~~ letters or other evidence of authority attached, may be
14 recorded in the public records. The satisfaction shall be an
15 effective discharge of the mortgage or lien, irrespective of
16 whether the debtor making payment had received a written
17 demand before paying the debt.

18 (4) All persons indebted to the estate of a decedent,
19 or having possession of personal property belonging to the
20 estate, who have received no written demand from a personal
21 representative or curator appointed in this state for payment
22 of the debt or the delivery of the property are authorized to
23 pay the debt or to deliver the personal property to the
24 foreign personal representative after the expiration of 60
25 days from the date of ~~his or her~~ appointment of the foreign
26 personnel representative.

27 Section 163. Section 734.102, Florida Statutes, is
28 amended to read:

29 734.102 Ancillary administration.--

30 (1) If a nonresident of this state dies leaving assets
31 in this state, credits due ~~him or her~~ from residents in this

1 state, or liens on property in this state, a personal
2 representative specifically designated in the decedent's will
3 to administer the Florida property shall be entitled to have
4 ancillary letters issued ~~to him or her~~, if qualified to act in
5 Florida. Otherwise, the foreign personal representative of the
6 decedent's estate shall be entitled to have letters issued ~~to~~
7 ~~him or her~~, if qualified to act in Florida. If the foreign
8 personal representative is not qualified to act in Florida and
9 the will names an alternate or successor who is qualified to
10 act in Florida, the alternate or successor shall be entitled
11 to have letters issued ~~to him or her~~. Otherwise, those
12 entitled to a majority interest of the Florida property may
13 have letters issued to a personal representative selected by
14 them who is qualified to act in Florida. If the decedent dies
15 intestate and the foreign ~~domiciliary~~ personal representative
16 is not qualified to act in Florida, the order of preference
17 for appointment of a personal representative as prescribed in
18 this code shall apply. If ancillary letters are applied for
19 by other than the domiciliary personal representative, prior
20 notice shall be given to any domiciliary personal
21 representative.

22 (2) Ancillary administration shall be commenced as
23 provided by the Florida Probate Rules. ~~To entitle the~~
24 ~~applicant to ancillary letters, an authenticated copy of so~~
25 ~~much of the domiciliary proceedings shall be filed as will~~
26 ~~show either:~~

27 ~~(a) The will, petition for probate, order admitting~~
28 ~~the will to probate, and letters, if there are such; or~~

29 ~~(b) The petition for letters and the letters.~~

30 (3) ~~On filing the authenticated copy of a probated~~
31 ~~will, including any probated codicils, the court shall~~

1 ~~determine~~ If the will and any ~~the~~ codicils, are executed as
2 required by the code, they shall be admitted to probate if
3 ~~any, comply with s. 732.502(1) or s. 732.502(2). If they~~
4 ~~comply, the court shall admit the will and any codicils to~~
5 ~~record.~~

6 (4) The ancillary personal representative shall give
7 bond as do personal representatives generally. All
8 proceedings for appointment and administration of the estate
9 shall be as similar to those in original administrations as
10 possible.

11 (5) Unless creditors' claims are otherwise barred by
12 s. 733.710, the ancillary personal representative shall cause
13 a notice to creditors to be served and published according to
14 the requirements of chapter 733. Claims not filed in
15 accordance with chapter 733 shall be barred as provided in s.
16 733.702.

17 ~~(6)~~~~(5)~~ After the payment of all expenses of
18 administration and claims against the estate, the court may
19 order the remaining property held by the ancillary personal
20 representative transferred to the foreign domiciliary personal
21 representative or distributed to the beneficiaries ~~heirs or~~
22 ~~devisees.~~

23 ~~(7)~~~~(6)~~ Ancillary personal representatives shall have
24 the same rights, powers, and authority as other personal
25 representatives in Florida to manage and settle estates; to
26 sell, lease, or mortgage local property; and to raise funds
27 for the payment of debts, claims, and devises in the
28 domiciliary jurisdiction. No property shall be sold, leased,
29 or mortgaged to pay a debt or claim that is barred by any
30 statute of limitation or of nonclaim of this state.

31

1 Section 164. Section 734.1025, Florida Statutes, is
2 amended to read:

3 734.1025 Nonresident decedent's testate estate with
4 property not exceeding ~~\$50,000~~\$25,000 in this state;
5 determination of claims.--

6 (1) When a nonresident decedent dies testate and
7 leaves property subject to administration in this state the
8 gross value of which does not exceed \$50,000 at the date of
9 death~~\$25,000~~, the foreign domiciliary personal representative
10 of the estate ~~may determine the question of claims in this~~
11 ~~state~~ before the expiration of 2 years after the decedent's
12 death may file ~~the 2-year period provided in s. 733.710 by~~
13 ~~filing~~ in the circuit court of the county where any property
14 is located an authenticated transcript of so much of the
15 foreign domiciliary proceedings as will show the will and
16 beneficiaries of the estate, as provided in the Florida
17 Probate Rules. The court shall admit the will and any codicils
18 to probate if they comply with s. 732.502(1) or (2).+

19 ~~(a) In a testate estate, the probated will and all~~
20 ~~probated codicils of the decedent; the order admitting them to~~
21 ~~record; the letters or their equivalent; and the part of the~~
22 ~~record showing the names of the devisees and heirs of the~~
23 ~~decedent or an affidavit of the domiciliary personal~~
24 ~~representative reciting that the names are not shown or not~~
25 ~~fully disclosed by the domiciliary record and specifying the~~
26 ~~names. On presentation of the foregoing, the court shall~~
27 ~~admit the will and any codicils to probate if they comply with~~
28 ~~s. 732.502(1) or (2).~~

29 ~~(b) In an intestate estate, the authenticated copy of~~
30 ~~letters of administration, or their equivalent, with the part~~
31 ~~of the record showing the names of the heirs of the decedent~~

1 ~~or an affidavit of the domiciliary personal representative~~
2 ~~supplying the names, as provided in paragraph (a). On~~
3 ~~presentation of the foregoing, the court shall order them~~
4 ~~recorded.~~

5 (2) ~~After complying with the foregoing requirements,~~
6 The foreign domiciliary personal representative may shall
7 cause a notice to creditors to be served and published
8 according to the relevant requirements of chapter 733 s.
9 731.111, notifying all persons having claims or demands
10 against the estate to file them. Claims not filed in
11 accordance with chapter 733 shall be barred as provided in s.
12 733.702. If any claim is filed, a personal representative
13 shall be appointed as provided in the Florida Probate Rules.

14 ~~(3) The procedure for filing claims and objection to~~
15 ~~them and for suing on them shall be the same as for other~~
16 ~~estates, except as hereinafter provided.~~

17 ~~(4) If no claims are filed against the estate within~~
18 ~~the time allowed, the court shall enter an order adjudging~~
19 ~~that notice to creditors has been duly given and proof thereof~~
20 ~~filed and that no claims have been filed against the estate or~~
21 ~~that all claims have been satisfied.~~

22 ~~(5) If any claim is filed against the estate within~~
23 ~~the time allowed, the court shall send to the domiciliary~~
24 ~~personal representative a copy of the claim and a notice~~
25 ~~setting a date for a hearing to appoint an ancillary personal~~
26 ~~representative. At the hearing, the court shall appoint an~~
27 ~~ancillary personal representative according to the preferences~~
28 ~~as provided in s. 733.301.~~

29 ~~(6) If an ancillary personal representative is~~
30 ~~appointed pursuant to subsection (5), the procedure for~~
31 ~~filing, objecting to, and suing on claims shall be the same as~~

1 ~~for other estates, except that the ancillary personal~~
2 ~~representative appointed shall have not fewer than 30 days~~
3 ~~from the date of his or her appointment within which to object~~
4 ~~to any claim filed.~~

5 ~~(7) The filing by domiciliary personal representatives~~
6 ~~of portions of the domiciliary probate proceedings as~~
7 ~~specified in this section, and the barring of claims of~~
8 ~~creditors in such estates by the publication of notice to~~
9 ~~creditors as set forth in this section, in all cases prior to~~
10 ~~June 25, 1980, are hereby validated and confirmed.~~

11 Section 165. Paragraph (a) of subsection (1) and
12 subsection (3) of section 734.104, Florida Statutes, are
13 amended to read:

14 734.104 Foreign wills; admission to record; effect on
15 title.--

16 (1) An authenticated copy of the will of a nonresident
17 that devises real property in this state, or any right, title,
18 or interest in the property, may be admitted to record in any
19 county of this state where the property is located at any time
20 after 2 years from the death of the decedent or at any time
21 after the domiciliary personal representative has been
22 discharged if there has been no proceeding to administer the
23 estate of the decedent in this state, provided:

24 (a) The will was executed as required by Chapter 732
25 ~~complies with s. 732.502 as to form and manner of execution;~~
26 and

27 (3) If the court finds that the requirements of this
28 section have been met ~~has been complied with~~, it shall enter
29 an order admitting the foreign will to record.

30 Section 166. Section 734.201, Florida Statutes, is
31 amended to read:

1 734.201 Jurisdiction by act of foreign personal
2 representative.--A foreign personal representative submits
3 personally to the jurisdiction of the courts of this state in
4 any proceeding concerning the estate by:

5 (1) Filing authenticated copies of the domiciliary
6 proceedings under s. 734.104;~~734.103~~.

7 (2) Receiving payment of money or taking delivery of
8 personal property, under s. 734.101; ~~or~~.

9 (3) Doing any act as a personal representative in this
10 state that would have given the state jurisdiction over that
11 person ~~him or her~~ as an individual.

12 Section 167. Section 734.202, Florida Statutes, is
13 amended to read:

14 734.202 Jurisdiction by act of decedent.--In addition
15 to jurisdiction conferred by s. 734.201, a foreign personal
16 representative is subject to the jurisdiction of the courts of
17 this state to the same extent that the ~~his or her~~ decedent was
18 subject to jurisdiction immediately before death.

19 Section 168. Section 735.101, Florida Statutes, is
20 repealed:

21 ~~735.101 Family administration; nature of~~
22 ~~proceedings.--Family administration may be had in the~~
23 ~~administration of a decedent's estate when it appears:~~

24 ~~(1) In an intestate estate, that the heirs at law of~~
25 ~~the decedent consist solely of a surviving spouse, lineal~~
26 ~~descendants, and lineal ascendants, or any of them.~~

27 ~~(2) In a testate estate, that the beneficiaries under~~
28 ~~the will consist of a surviving spouse, lineal descendants,~~
29 ~~and lineal ascendants, or any of them, and that any specific~~
30 ~~or general devise to others constitutes a minor part of the~~
31 ~~decedent's estate.~~

1 ~~(3) In a testate estate, that the decedent's will does~~
2 ~~not direct administration as required by chapter 733.~~

3 ~~(4) That the value of the gross estate, as of the date~~
4 ~~of death, for federal estate tax purposes is less than~~
5 ~~\$60,000.~~

6 ~~(5) That the entire estate consists of personal~~
7 ~~property or, if real property forms part of the estate, that~~
8 ~~administration under chapter 733 has proceeded to the point~~
9 ~~that all claims of creditors have been processed or barred.~~

10 Section 169. Section 735.103, Florida Statutes, is
11 repealed:

12 ~~735.103 Petition for family administration.--A~~
13 ~~verified petition for family administration shall contain, in~~
14 ~~addition to the statements required by s. 733.202, the~~
15 ~~following:~~

16 ~~(1) Facts showing that petitioners are entitled to~~
17 ~~family administration, as provided in s. 735.101.~~

18 ~~(2) A complete list of the assets of the gross estate~~
19 ~~for federal estate tax purposes and their estimated value.~~

20 ~~(3) An appropriate statement that the estate is not~~
21 ~~indebted or that provision for payment of debts has been made~~
22 ~~or the claims are barred.~~

23 ~~(4) A proposed schedule of distribution of all assets~~
24 ~~to those entitled thereto as surviving spouse, heirs,~~
25 ~~beneficiaries, or creditors.~~

26
27 ~~The petition shall be signed and verified by all beneficiaries~~
28 ~~and the surviving spouse, if any. The petition may be signed~~
29 ~~on behalf of a minor or an incompetent by her or his legal~~
30 ~~guardian or, if none, by her or his natural guardian.~~

31

1 Section 170. Section 735.107, Florida Statutes, is
2 repealed:

3 ~~735.107 Family administration distribution.~~

4 ~~(1) Upon filing the petition for family
5 administration, the will, if any, shall be proved in
6 accordance with chapter 733 and be admitted to probate.~~

7 ~~(2) If the estate consists of personal property only,
8 then, after such hearing as the court may require, an order of
9 family administration may be entered allowing immediate
10 distribution of the assets to the persons entitled to them.~~

11 ~~(3) The order of family administration and the
12 distribution so entered shall have the following effect:~~

13 ~~(a) Those to whom specified parts of the decedent's
14 estate are assigned by the order shall be entitled to receive
15 and collect the parts and to have the parts transferred to
16 them. They may maintain actions to enforce the right.~~

17 ~~(b) Debtors of the decedent, those holding property of
18 the decedent, and those with whom securities or other property
19 of the decedent are registered are authorized and empowered to
20 comply with the order by paying, delivering, or transferring
21 to those specified in the order the parts of the decedent's
22 estate assigned to them by the order, and the persons so
23 paying, delivering, or transferring shall not be accountable
24 to anyone else for the property.~~

25 ~~(c) After the entry of the order, bona fide purchasers
26 for value from those to whom property of the decedent may be
27 assigned by the order shall take the property free of all
28 claims of creditors of the decedent and all rights of the
29 surviving spouse and all other heirs and devisees.~~

30 ~~(d) Property of the decedent that is not exempt from
31 claims of creditors and that remains in the hands of those to~~

1 ~~whom it may be assigned by the order shall continue to be~~
2 ~~liable for claims against the decedent until barred as~~
3 ~~provided in this law.~~

4 ~~(e) The petitioners for the order of family~~
5 ~~administration shall be personally liable for all lawful~~
6 ~~claims against the estate of the decedent, but only to the~~
7 ~~extent of the value of the estate of the decedent actually~~
8 ~~received by each petitioner, exclusive of the property exempt~~
9 ~~from claims of creditors under the constitution and statutes~~
10 ~~of Florida.~~

11 ~~(f) After 2 years from the death of the decedent,~~
12 ~~neither her nor his estate nor those to whom it may be~~
13 ~~assigned shall be liable for any claim against the decedent,~~
14 ~~unless proceedings have been taken for the enforcement of the~~
15 ~~claim.~~

16 ~~(g) Any heir or devisee of the decedent who was~~
17 ~~lawfully entitled to share in the estate but was not included~~
18 ~~in the order of family administration and distribution may~~
19 ~~enforce her or his rights against those who procured the order~~
20 ~~in appropriate proceedings and, when successful, shall be~~
21 ~~awarded reasonable attorney's fees as an element of costs.~~

22 ~~(4)(a) If the estate of the decedent includes real~~
23 ~~property and administration under chapter 733 has proceeded to~~
24 ~~the point that all claims of creditors have been processed or~~
25 ~~barred, or upon the satisfaction of all claims of creditors,~~
26 ~~if any, and after such hearing as the court may require, an~~
27 ~~order of family administration may be entered and the personal~~
28 ~~representative authorized to make distribution of the assets~~
29 ~~to the persons entitled to them. Upon evidence satisfactory~~
30 ~~to the court that distribution has been made, the court shall~~
31 ~~enter an order discharging the personal representative.~~

1 ~~(b) Any heir or devisee of the decedent who was~~
2 ~~lawfully entitled to share in the estate but who was not~~
3 ~~included in the order of family administration and~~
4 ~~distribution may enforce her or his rights against those who~~
5 ~~procured the order in appropriate proceedings and, when~~
6 ~~successful, shall be awarded reasonable attorney's fees as an~~
7 ~~element of costs.~~

8 Section 171. Subsection (2) of section 735.201,
9 Florida Statutes, is amended to read:

10 735.201 Summary administration; nature of
11 proceedings.--Summary administration may be had in the
12 administration of either a resident or nonresident decedent's
13 estate, when it appears:

14 (2) That the value of the entire estate subject to
15 administration in this state, less the value of property
16 exempt from the claims of creditors, does not exceed \$50,000
17 ~~\$25,000~~ or that the decedent has been dead for more than 2
18 years.

19 Section 172. Section 735.203, Florida Statutes, is
20 amended to read:

21 735.203 Petition for summary administration.--

22 (1) A petition for summary administration may be filed
23 by any beneficiary, ~~heir at law~~, or person nominated as
24 personal representative in the decedent's will offered for
25 probate. ~~and shall be signed and verified by:~~ The petition
26 must be signed and verified by

27 ~~(a) the surviving spouse, if any and any; the heirs at~~
28 ~~law or beneficiaries.~~

29 (2) If a person named in subsection (1) has died, is
30 incapacitated, or is a minor, or has conveyed or transferred
31

1 all interest in the property of the estate, then, as to that
2 person, the petition must be signed and certified by:
3 (a) The personal representative, if any, of a deceased
4 person or, if none, the surviving spouse, if any, and the
5 beneficiaries;
6 (b) The guardian of an incapacitated person or a
7 minor; or
8 (c) The grantee or transferee of any of them shall be
9 authorized to sign and verify the petition instead of the
10 beneficiary or surviving spouse.
11 (3) The joinder in, or consent to, a petition for
12 summary administration is not required of a beneficiary who
13 will receive full distributive share under the proposed
14 distribution. Any beneficiary not joining or consenting shall
15 receive formal notice of the petition. ~~who are sui juris; and~~
16 ~~the guardians of any heirs at law or beneficiaries who are not~~
17 ~~sui juris; or~~
18 ~~(b) The persons described by s. 735.209.~~
19 ~~(2) A petition for summary administration shall~~
20 ~~contain, in addition to the statements required by s.~~
21 ~~733.202(2)(b) and (c), the following:~~
22 ~~(a) Facts showing that petitioners are entitled to~~
23 ~~summary administration as provided in s. 735.201.~~
24 ~~(b) A complete list of the assets of the estate and~~
25 ~~their estimated value, together with those assets claimed to~~
26 ~~be exempt.~~
27 ~~(c) A statement that the estate is not indebted or~~
28 ~~that provision for payment of debts has been made.~~
29 ~~(d) A proposed schedule of distribution of all assets~~
30 ~~to those entitled thereto as surviving spouse, beneficiaries,~~
31 ~~or creditors.~~

1 Section 173. Section 735.206, Florida Statutes, is
2 amended to read:

3 735.206 Summary administration distribution.--

4 (1) Upon the filing of the petition for summary
5 administration, the will, if any, shall be proved in
6 accordance with chapter 733 and be admitted to probate.

7 (2) Prior to entry of the order of summary
8 administration, the petitioner shall make a diligent search
9 and reasonable inquiry for any known or reasonably
10 ascertainable creditors, serve a copy of the petition on those
11 creditors, and make provision for payment for those creditors
12 to the extent that assets are available.

13 ~~(3)(2) The court may enter~~ ~~After such hearing as the~~
14 ~~court may require,~~ an order of summary administration ~~may be~~
15 ~~entered~~ allowing immediate distribution of the assets to the
16 persons entitled to them.

17 (4)(3) The order of summary administration and
18 distribution so entered shall have the following effect:

19 (a) Those to whom specified parts of the decedent's
20 estate, including exempt property, are assigned by the order
21 shall be entitled to receive and collect the parts and to have
22 the parts transferred to them. They may maintain actions to
23 enforce the right.

24 (b) Debtors of the decedent, those holding property of
25 the decedent, and those with whom securities or other property
26 of the decedent are registered are authorized and empowered to
27 comply with the order by paying, delivering, or transferring
28 to those specified in the order the parts of the decedent's
29 estate assigned to them by the order, and the persons so
30 paying, delivering, or transferring shall not be accountable
31 to anyone else for the property.

1 (c) After the entry of the order, bona fide purchasers
2 for value from those to whom property of the decedent may be
3 assigned by the order shall take the property free of all
4 claims of creditors of the decedent and all rights of the
5 surviving spouse and all other beneficiaries ~~heirs and~~
6 ~~devisees~~.

7 (d) Property of the decedent that is not exempt from
8 claims of creditors and that remains in the hands of those to
9 whom it may be assigned by the order shall continue to be
10 liable for claims against the decedent until barred as
11 provided in the code ~~this law~~. Any known or reasonably
12 ascertainable creditor who did not receive notice and for whom
13 provision for payment was not made may enforce the claim and,
14 if the creditor prevails, shall be awarded reasonable
15 attorneys fees as an element of costs against those who joined
16 in the petition.

17 (e) The recipients of the decedent's property under
18 ~~petitioners for~~ the order of summary administration shall be
19 personally liable for a pro rata share of all lawful claims
20 against the estate of the decedent, but only to the extent of
21 the value of the estate of the decedent actually received by
22 each recipient ~~petitioner~~, exclusive of the property exempt
23 from claims of creditors under the constitution and statutes
24 of Florida.

25 (f) After 2 years from the death of the decedent,
26 neither the decedent's estate nor those to whom it may be
27 assigned shall be liable for any claim against the decedent,
28 unless proceedings have been taken for the enforcement of the
29 claim.

30 (g) Any heir or devisee of the decedent who was
31 lawfully entitled to share in the estate but who was not

1 included in the order of summary administration and
2 distribution may enforce all ~~his or her~~ rights in appropriate
3 proceedings against those who procured the order and, if when
4 successful, shall be awarded reasonable attorney's fees as an
5 element of costs.

6 Section 174. Section 735.2063, Florida Statutes, is
7 amended to read:

8 735.2063 Notice to creditors.--

9 (1) Any person who has obtained ~~received~~ an order of
10 summary administration may publish a notice to creditors
11 according to the relevant requirements of s. 733.2121 ~~731.111~~,
12 notifying all persons having claims or demands against the
13 estate of the decedent that an order of summary administration
14 has been entered by the court. The ~~Such~~ notice shall ~~will~~
15 specify the total ~~cash~~ value of the estate and the names and
16 addresses of those to whom it has been assigned by the ~~such~~
17 order. ~~Such notice, if published, shall be published once a~~
18 ~~week for 2 consecutive weeks in a newspaper published in the~~
19 ~~county where such order was entered, and proof of publication~~
20 ~~of such notice shall be filed with the court.~~

21 (2) If proof of publication of the ~~such~~ notice is
22 filed with the court, all claims and demands of creditors
23 against the estate of the decedent who are not known or are
24 reasonably ascertainable shall be forever barred unless the
25 ~~such~~ claims and demands are filed with the court within 3
26 months after ~~from~~ the first publication of the ~~such~~ notice.

27 Section 175. Section 735.209, Florida Statutes, is
28 repealed:

29 ~~735.209 Joinder of heirs, devisees, or surviving~~
30 ~~spouse in summary administration.--~~

31

1 ~~(1) When any heir, devisee, or surviving spouse is~~
2 ~~authorized or required under this part to join in any~~
3 ~~agreement or petition and any such person has died, become~~
4 ~~incompetent or is a minor, or has conveyed or transferred all~~
5 ~~of his or her interest in the property of the estate, then:~~

6 ~~(a) The heirs, devisees, and surviving spouse, if any,~~
7 ~~of a deceased person,~~

8 ~~(b) The personal representative, if any, of the estate~~
9 ~~of a deceased person,~~

10 ~~(c) The guardian of an incompetent or minor, or~~

11 ~~(d) The grantee or transferee of any of them~~

12

13 ~~shall be authorized to join in such agreement or petition~~
14 ~~instead of the heir, devisee, or surviving spouse.~~

15 ~~(2) The joinder in, or consent to, a petition for~~
16 ~~summary administration is not required of an heir or~~
17 ~~beneficiary who will receive his or her full distributive~~
18 ~~share under the proposed distribution. Any beneficiary not~~
19 ~~joining or consenting shall receive formal notice of the~~
20 ~~petition.~~

21 Section 176. Subsection (3) of section 735.301,
22 Florida Statutes, is amended to read:

23 735.301 Disposition without administration.--

24 (3) Any person, firm, or corporation paying,
25 delivering, or transferring property under the authorization
26 shall be forever discharged from ~~any~~ liability thereon.

27 Section 177. Section 735.302, Florida Statutes, is
28 amended to read:

29 735.302 Income tax refunds in certain cases.--

30 (1) In any case when the United States Treasury
31 Department determines that an overpayment of federal income

1 tax exists and the person in whose favor the overpayment is
2 determined is dead at the time the overpayment of tax is to be
3 refunded, and irrespective of whether the decedent had filed a
4 joint and several or separate income tax return, the amount of
5 the overpayment, if not in excess of \$2,500~~\$500~~, may be
6 refunded as follows:

7 (a) Directly to the surviving spouse on his or her
8 verified application; or

9 (b) If there is no surviving spouse, to one of the
10 decedent's children who is designated in a verified
11 application purporting to be executed by all of the decedent's
12 children over the age of 14 years.

13

14 In either event, the application must show that the decedent
15 was not indebted, that provision has been made for the payment
16 of the decedent's debts, or that the entire estate is exempt
17 from the claims of creditors under the constitution and
18 statutes of the state, and that no administration of the
19 estate, including summary administration, has been initiated
20 and that none is planned, to the knowledge of the applicant.

21 (2) If a refund is made to the surviving spouse or
22 designated child pursuant to the application, the refund shall
23 operate as a complete discharge to the United States from
24 liability from any action, claim, or demand by any beneficiary
25 of the decedent or other person. ~~Nothing in~~ This section
26 shall be construed as establishing the ownership or rights of
27 the payee ~~any person~~ in the refund ~~so distributed~~.

28 Section 178. Section 737.3054, Florida Statutes, is
29 amended to read:

30 737.3054 Trustee's duty to pay expenses and
31 obligations of grantor's ~~settlor's~~ estate.--

1 (1) A trustee of a trust described in s. 733.707(3)
2 shall pay to the personal representative of a grantor's
3 ~~settlor's~~ estate any amounts that the personal representative
4 certifies in writing to the trustee are required to pay the
5 expenses of the administration and obligations of the
6 grantor's ~~settlor's~~ estate ~~and the enforceable claims of the~~
7 ~~settlor's creditors~~. Payments made by a trustee, unless
8 otherwise provided in the trust instrument, must be charged as
9 expenses of the trust without a contribution from anyone. The
10 interests ~~interest~~ of all beneficiaries of such a trust are
11 subject to the provisions of this subsection; however, the
12 payments must be made from assets or property or the proceeds
13 thereof, other than assets proscribed in s. 733.707(3), which
14 are included in the grantor's ~~settlor's~~ gross estate for
15 federal estate tax purposes.

16 (2) Unless a grantor ~~settlor~~ provides by will, or
17 designates in a trust described in s. 733.707(3) ~~the~~ funds or
18 property passing under the ~~a trust described in s. 733.707(3)~~
19 to be so used, the expenses of the administration and
20 obligations of the grantor's ~~settlor's~~ estate ~~and enforceable~~
21 ~~claims of the settlor's creditors~~ must be paid from the trust
22 in the following order:

23 (a) Property of the residue of the trust remaining
24 after all distributions that are to be satisfied by reference
25 to a specific property or type of property, fund, or sum;

26 (b) Property that is not to be distributed from
27 specified or identified property or a specified or identified
28 item of property; and

29 (c) Property that is to be distributed from specified
30 or identified property or a specified or identified item of
31 property.

1 (3) Trust distributions that are to be satisfied from
2 specified or identified property must be classed as
3 distributions to be satisfied from the general assets of the
4 trust and not otherwise disposed of in the trust instrument
5 upon the failure or insufficiency of funds or property from
6 which payment should be made, to the extent of the
7 insufficiency. Trust distributions given for valuable
8 consideration abate with other distributions of the same class
9 only to the extent of the excess over the value of the
10 consideration until all others of the same class are
11 exhausted. Except as provided in this section, trust
12 distributions abate equally and ratably and without preference
13 or priority between real and personal property. When a
14 specified or identified item of property that has been
15 designated for distribution in the trust instrument or that is
16 charged with a distribution is sold or taken by the trustee,
17 other beneficiaries shall contribute according to their
18 respective interests to the beneficiary whose property has
19 been sold or taken, and before distribution the trustee shall
20 determine the amounts of the respective contributions, and
21 they must be paid or withheld before distribution is made.

22 (4) The trustee shall pay the expenses of trust
23 administration, including compensation of trustees and their
24 attorneys, before and in preference to the expenses of the
25 administration and obligations of the grantor's ~~settlor's~~
26 estate ~~and enforceable claims of the settlor's creditors.~~

27 Section 179. Section 737.306, Florida Statutes, is
28 amended to read:

29 737.306 Personal liability of trustee.--

30 (1)(a) Unless otherwise provided in the contract, a
31 trustee is not personally liable on contracts, except

1 contracts for attorneys' fees, properly entered into in the
2 trustee's fiduciary capacity in the course of administration
3 of the trust estate unless the trustee ~~he or she~~ fails to
4 reveal that ~~his or her~~ representative capacity and identify
5 the trust estate in the contract.

6 (b) A trustee is personally liable for obligations
7 arising from ownership or control of property of the trust
8 estate or for torts committed in the course of administration
9 of the trust estate only if the trustee is personally at
10 fault.

11 (c) Claims based on contracts, except contracts for
12 attorneys' fees, entered into by a trustee in his or her
13 fiduciary capacity, on obligations arising from ownership or
14 control of the trust estate, or on torts committed in the
15 course of trust administration may be asserted against the
16 trust estate by proceeding against the trustee in the
17 trustee's ~~his or her~~ fiduciary capacity, whether or not the
18 trustee is personally liable.

19 (2) Issues of liability between the trust estate and
20 the trustee individually may be determined in a proceeding for
21 accounting, surcharge, or indemnification, or in any other
22 appropriate proceeding.

23 (3) A successor trustee is not personally liable for
24 any action taken or omitted to be taken by any prior trustee;
25 nor does any successor trustee have a duty to institute any
26 action against any prior trustee, or file any claim against
27 any prior trustee's estate, for any of the prior trustee's
28 acts or omissions as trustee under any of the following
29 circumstances:

30
31

1 (a) The successor trustee succeeds a trustee who was
2 also the grantor of a trust that was revocable during the time
3 that the grantor served as trustee;

4 (b) As to any beneficiary who has waived any
5 accounting required by s. 737.303, but only as to the periods
6 included in the ~~such~~ waiver;

7 (c) As to any beneficiary who has released the
8 successor trustee from the ~~such~~ duty to institute any action
9 or file any claim;

10 (d) As to any person who is not a beneficiary within
11 the meaning of s. 737.303(4)(b); or

12 (e) As to any beneficiary described in s.
13 737.303(4)(b):

14 1. If a super majority of the reasonably ascertainable
15 current income or principal beneficiaries described in s.
16 737.303(4)(b)1. and a super majority of the reasonably
17 ascertainable remainder beneficiaries described in s.
18 737.303(4)(b)2. have released the successor trustee;

19 2. If the beneficiary has not delivered a written
20 request to the successor trustee to institute an action or
21 file a claim against the prior trustee within 6 months after
22 the date of the successor trustee's acceptance of the trust,
23 if the successor trustee has notified the beneficiary in
24 writing of its acceptance in accordance with s. 737.303(1) and
25 that ~~such~~ writing advises the beneficiary that, unless the
26 beneficiary delivers the ~~such~~ written request within 6 months
27 after the date of acceptance, the ~~his or her~~ right to proceed
28 against the successor trustee will be barred pursuant to this
29 section; or

30 3. For any action or claim that the beneficiary is
31 barred from bringing against the prior trustee.

1 ~~(4)(a) Two years after the death of a settlor, neither~~
2 ~~a trust described in s. 733.707(3) as established by the~~
3 ~~settlor, the trustee of the trust, nor any beneficiary may be~~
4 ~~held liable for any claim or cause of action against the~~
5 ~~settlor by a creditor who seeks to recover from the trust,~~
6 ~~trustee, or beneficiary.~~

7 ~~(b) This subsection does not apply to a creditor who~~
8 ~~has timely filed a claim against the settlor's estate under s.~~
9 ~~733.702 within 2 years after the settlor's death and whose~~
10 ~~claim has not been paid or otherwise disposed of, even if the~~
11 ~~settlor's estate proceedings have been closed or otherwise~~
12 ~~completed.~~

13 ~~(c) This subsection does not affect the lien of a duly~~
14 ~~recorded mortgage or security interest or the right to~~
15 ~~foreclose and enforce the mortgage or lien.~~

16 (f)(5) For the purposes of this section, a super
17 majority of beneficiaries means at least two-thirds in
18 interest of the beneficiaries if the interests of the
19 beneficiaries are reasonably ascertainable; otherwise, it
20 means at least two-thirds in number of the beneficiaries. A
21 release or waiver under this section may be exercised by a
22 legal representative or natural guardian of the beneficiary
23 without the filing of any proceeding or approval of any court.
24 Nothing in this subsection~~(3)~~ affects any liability of the
25 prior trustee or the right of the successor trustee or any
26 beneficiary to pursue an action or claim against the prior
27 trustee.

28 Section 180. Section 737.3061, Florida Statutes, is
29 created to read:

30 737.3061 Limitations on actions against certain
31 trusts.--

1 (1) After the death of a grantor, no creditor of the
2 grantor may bring, maintain, or continue any direct action
3 against a trust described in s. 733.707(3), the trustee of the
4 trust or any beneficiary of the trust that is dependent on the
5 individual liability of the grantor. Those claims and causes
6 of action against the grantor shall be presented and enforced
7 against the grantor's estate as provided in part VII of
8 chapter 733, and the personal representative of the grantor's
9 estate may obtain payment from the trustee of a trust
10 described in s. 733.707(3) as provided in ss. 733.607(2),
11 733.707(3), and 737.3054(1).

12 (2) This section shall not preclude a direct action
13 against a trust described in s. 733.707(3), the trustee of the
14 trust, or a beneficiary of the trust that is not dependent on
15 the individual liability of the grantor.

16 (3) This section does not affect the lien of any duly
17 recorded mortgage or security interest or the lien of any
18 person in possession of personal property or the right to
19 foreclose and enforce the mortgage or lien.

20 Section 181. Section 737.308, Florida Statutes, is
21 amended to read:

22 737.308 Notice of trust.--

23 (1) Upon the death of a settlor of a trust described
24 in s. 733.707(3), the trustee must file a notice of trust with
25 the court of the county of the settlor's domicile and the
26 court having jurisdiction of the settlor's estate.

27 (2) The notice of trust must contain the name of the
28 settlor, the settlor's date of death, the title of the trust,
29 if any, the date of the trust, and the name and address of the
30 trustee.

31

1 (3) If the settlor's probate proceeding has been
2 commenced, the clerk must notify the trustee in writing of the
3 date of the commencement of the probate proceeding and the
4 file number.

5 (4) The clerk shall file and index the notice of trust
6 in the same manner as a caveat, unless there exists a probate
7 proceeding for the settlor's estate in which case the notice
8 of trust must be filed in the probate proceeding and the clerk
9 shall send a copy to the personal representative.

10 (5) The clerk shall send a copy of any caveat filed
11 regarding the settlor to the trustee, and the Notice of Trust
12 to any caveator, unless there is a probate proceeding pending
13 and the personal representative and the trustee are the same.

14 ~~(6) In any proceeding affecting the expenses of the~~
15 ~~administration of the estate, or any claims described in s.~~
16 ~~733.702(1), the trustee of a trust described in s. 733.707(3)~~
17 ~~is an interested person in the administration of the grantor's~~
18 ~~estate.~~

19 (6)~~(7)~~ Any proceeding affecting the expenses of the
20 administration or obligations of the grantor's estate ~~or any~~
21 ~~claims described in s. 733.702(1)~~ prior to the trustee filing
22 a notice of trust are binding upon the trustee.

23 (7)~~(8)~~ The trustee's failure to file the notice of
24 trust does not affect the trustee's obligation to pay expenses
25 of administration and obligations of the grantor's estate
26 ~~enforceable claims~~ as provided in s. 733.607(2).

27 Section 182. Section 215.965, Florida Statutes, is
28 amended to read:

29 215.965 Disbursement of state moneys.--Except as
30 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.
31 717.124(5), s. 732.107(5)~~(6)~~, or s. 733.816(5), all moneys in

1 the State Treasury shall be disbursed by state warrant, drawn
2 by the Comptroller upon the State Treasury and payable to the
3 ultimate beneficiary. This authorization shall include
4 electronic disbursement.

5 Section 183. Subsection (3) of section 660.46, Florida
6 Statutes, is amended to read:

7 660.46 Substitution of fiduciaries.--

8 (3) Unless a waiver or consent shall be filed in the
9 proceedings as provided in subsection (4), the provisions of
10 s. 731.301(1)~~(a)~~, ~~(c)~~, and (2)~~(d)~~ shall apply with respect to
11 notice of the proceedings to all persons who are then
12 cofiduciaries with the original fiduciary, other than a person
13 joining as a petitioner in the proceedings; to all persons
14 named in the governing instrument as substitutes or successors
15 to the fiduciary capacity of the original fiduciary; to the
16 persons then living who are entitled under the governing
17 instrument to appoint a substitute or successor to act in the
18 fiduciary capacity of the original fiduciary; to all vested
19 beneficiaries of the fiduciary account; and to all then-living
20 originators of the governing instrument. Unless a waiver or
21 consent shall be filed in the proceedings as provided in
22 subsection (4), the provisions of s. 731.301~~(2)~~ shall apply
23 with respect to notice to all contingent beneficiaries of the
24 fiduciary account. Only the persons or classes of persons
25 described in the foregoing provisions of this subsection shall
26 be deemed to be interested persons for the purposes of this
27 section and the proceedings and notices provided for in this
28 section; and the provisions of ss. 731.301(3) and
29 731.303(3)~~(4)~~ and (4)~~(5)~~, relating to notice requirements, the
30 effect of notice, and representation of interests, shall apply
31 to the proceedings provided for in this section.

1 Section 184. Subsection (1) of section 737.111,
2 Florida Statutes, is amended to read:

3 737.111 Execution requirements for express trusts.--

4 (1) The testamentary aspects of a trust defined in s.
5 731.201~~(34)~~~~(33)~~, are invalid unless the trust instrument is
6 executed by the settlor with the formalities required for the
7 execution of a will.

8 Section 185. In editing manuscript for the next
9 official version of the Florida Statutes, the Division of
10 Statutory Revision and Indexing is directed to:

11 (1) Change the title of Part II of Chapter 732,
12 Florida Statutes, from "Elective Share of Surviving Spouse" to
13 "Elective Share of Surviving Spouse; Rights in Community
14 Property."

15 (2) Change the title of Part III of Chapter 733,
16 Florida Statutes, from "Priority to Administer and
17 Qualifications of Personal Representative" to "Preference in
18 Appointment and Qualifications of Personal Representative."

19 (3) Change the title of Part IV of Chapter 733,
20 Florida Statutes, from "Appointment of Personal
21 Representative; Bonds" to "Fiduciary Bonds."

22 (4) Change the title of Part V of Chapter 733, Florida
23 Statutes, from "Curators; Successor Personal Representative;
24 Removal" to "Curators; Resignation and Removal of Personal
25 Representatives."

26 Section 186. This act shall take effect January 1,
27 2002. The substantive rights of all persons that have vested
28 prior to January 1, 2002, shall be determined as provided in
29 former chapters 63, 215, 409, 660, and 731-737, Florida
30 Statutes, as they existed prior to January 1, 2002. The
31 procedures for the enforcement of substantive rights which

1 have vested prior to January 1, 2002, shall be as provided in
2 this act, except that any Family Administration filed before
3 January 1, 2002, may be completed as a Family Administration.

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6 HOUSE SUMMARY

7 Revises the Florida Probate Code to clarify current
8 language and to provide consistency throughout the code.
9 See bill for details.

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