

1
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.; clarifying
4 provisions; revising a filing date; revising
5 certain provisions regarding owner's
6 representation; amending s. 732.1101, F.S.;
7 providing that aliens shall have the same right
8 of inheritance as citizens; amending s.
9 732.2025, F.S.; redefining the term "qualifying
10 special needs trust" or "supplemental needs
11 trust"; amending s. 732.2035, F.S.; redefining
12 the term "decedent's ownership interest";
13 amending s. 732.2045, F.S.; adding an exclusion
14 to the elective share for property that is part
15 of the protected homestead; amending s.
16 732.2055, F.S.; redefining "value" for purposes
17 of calculating the elective estate; amending s.
18 732.2075, F.S.; revising the formula for
19 payment of the elective share; amending s.
20 732.2085, F.S.; adding a cross reference;
21 amending s. 732.2095, F.S.; correcting a cross
22 reference; modifying the formula for
23 determining the fair market value of assets
24 regarding the elective share; amending s.
25 732.2105, F.S.; revising the effect of an
26 elective share election on other estate
27 interests; amending s. 732.2125, F.S.; revising
28 language with respect to the right of election;
29 amending s. 732.2135, F.S.; revising language
30 with respect to time of election, extensions,
31 and withdrawal; amending s. 732.2145, F.S.;

1 revising language with respect to the order of
2 contribution; amending s. 732.2155, F.S.;
3 revising language with respect to the effective
4 date of certain trusts; providing for
5 applicability of certain provisions under
6 specified circumstances; amending s. 732.218,
7 F.S.; revising language with respect to
8 rebuttable presumptions; amending s. 732.219,
9 F.S., relating to disposition upon death;
10 amending s. 732.221, F.S.; revising language
11 with respect to perfection of title of personal
12 representative or beneficiary; amending s.
13 732.222, F.S., relating to the purchaser for
14 value or lender; amending s. 732.223, F.S.;
15 revising language with respect to perfection of
16 title of surviving spouse; amending s. 732.302,
17 F.S.; revising language with respect to
18 pretermitted children; amending s. 732.401,
19 F.S.; revising language with respect to descent
20 of homestead; amending s. 732.4015, F.S.;
21 revising language with respect to the
22 definition of "owner" and "devise" concerning
23 homestead; amending s. 732.402, F.S.; revising
24 language with respect to exempt property;
25 amending s. 732.403, F.S.; revising language
26 with respect to family allowance; amending s.
27 732.501, F.S.; revising language with respect
28 to who may make a will; amending s. 732.502,
29 F.S.; revising language with respect to
30 execution of wills; amending s. 732.503, F.S.;
31 revising language with respect to self-proof of

1 will; amending s. 732.505, F.S.; revising
2 language with respect to revocation by writing;
3 amending s. 732.507, F.S.; revising language
4 with respect to effect of subsequent marriage,
5 birth, or dissolution of marriage; amending s.
6 732.513, F.S.; revising language with respect
7 to devises to trustees; amending s. 732.514,
8 F.S., relating to vesting of devises; amending
9 s. 732.515, F.S.; revising language with
10 respect to separate writing identifying devises
11 of tangible property; amending s. 732.6005,
12 F.S., relating to rules of construction and
13 intention; amending s. 732.601, F.S.; revising
14 language with respect to the Simultaneous Death
15 Law; amending s. 732.603, F.S.; revising
16 language with respect to antilapse, deceased
17 devises, and class gifts; amending s. 732.604,
18 F.S., relating to the failure of a testamentary
19 provision; amending s. 732.605, F.S., relating
20 to change in securities, accessions, and
21 nonademption; amending s. 732.606, F.S.,
22 relating to nonademption of specific devises in
23 certain cases; amending s. 732.701, F.S.;
24 providing for agreements concerning succession
25 executed by a nonresident under certain
26 circumstances; amending s. 732.702, F.S.;
27 revising language with respect to waiver of
28 spousal rights; amending s. 732.801, F.S.;
29 revising language with respect to disclaimer of
30 interests in property passing by will or
31 intestate succession or under certain powers of

1 appointment; amending s. 732.804, F.S.;

2 providing for provisions relating to

3 disposition of the body; amending s. 732.901,

4 F.S., relating to production of wills;

5 eliminating language with respect to willful

6 failure to deposit the will; transferring,

7 amending, and renumbering ss. 732.910, 732.911,

8 732.912, 732.913, 732.914, 732.915, 732.916,

9 732.917, 732.918, 732.9185, 732.919, 732.921,

10 732.9215, 732.92155, 732.9216, and 732.922,

11 F.S.; correcting cross references; amending ss.

12 381.004 and 381.0041, F.S.; correcting cross

13 references; amending s. 733.101, F.S., relating

14 to the venue of probate proceedings; amending

15 s. 733.103, F.S., relating to the effect of

16 probate; amending s. 733.104, F.S.; revising

17 language with respect to the suspension of the

18 statute of limitations in favor of the personal

19 representative; amending s. 733.105, F.S.;

20 revising language with respect to the

21 determination of beneficiaries; amending s.

22 733.106, F.S.; revising language with respect

23 to costs and attorney fees; amending s.

24 733.107, F.S., relating to the burden of proof

25 in contests; amending s. 733.109, F.S.;

26 revising language with respect to the

27 revocation of probate; amending s. 733.201,

28 F.S., relating to proof of wills; amending s.

29 733.202, F.S.; providing that any interested

30 person may petition for administration;

31 repealing s. 733.203, F.S., relating to when

1 notice is required; amending s. 733.204, F.S.;
2 revising language with respect to the probate
3 of a will written in a foreign language;
4 amending s. 733.205, F.S., relating to the
5 probate of a notarial will; amending s.
6 733.206, F.S., relating to the probate of a
7 resident after foreign probate; amending s.
8 733.207, F.S.; revising requirements with
9 respect to the establishment and probate of a
10 lost or destroyed will; amending s. 733.208,
11 F.S.; revising language with respect to the
12 discovery of a later will; amending s. 733.209,
13 F.S.; providing requirements with respect to
14 the estates of missing persons; amending s.
15 733.212, F.S.; revising language with respect
16 to the notice of administration and filing of
17 objections; creating s. 733.2121, F.S.;
18 providing for notice to creditors and the
19 filing of claims; amending s. 733.2123, F.S.,
20 relating to adjudication before issuance of
21 letters; amending s. 733.213, F.S.; providing
22 that a will may not be construed until after it
23 has been admitted to probate; amending s.
24 733.301, F.S.; revising language with respect
25 to preference in the appointment of the
26 personal representative; amending s. 733.302,
27 F.S.; revising language with respect to who may
28 be appointed personal representative; amending
29 s. 733.305, F.S., relating to trust companies
30 and other corporations and associations;
31 amending s. 733.306, F.S.; revising language

1 with respect to the effect of the appointment
2 of a debtor; amending s. 733.307, F.S.,
3 relating to succession of administration;
4 amending s. 733.308, F.S., relating to the
5 administrator ad litem; amending s. 733.309,
6 F.S., relating to the executor de son tort;
7 creating s. 733.310, F.S.; providing for when a
8 personal representative is not qualified;
9 repealing s. 733.401, F.S., relating to the
10 issuance of letters; amending s. 733.402, F.S.;
11 revising language with respect to the bond of a
12 fiduciary; amending s. 733.403, F.S.; revising
13 language with respect to the amount of the
14 bond; amending s. 733.404, F.S., relating to
15 the liability of the surety; amending s.
16 733.405, F.S.; revising language with respect
17 to the release of surety; amending s. 733.406,
18 F.S.; revising language with respect to bond
19 premium allowable as an expense of
20 administration; amending s. 733.501, F.S.;
21 revising language with respect to curators;
22 amending s. 733.502, F.S.; revising language
23 with respect to the resignation of the personal
24 representative; amending s. 733.503, F.S.;
25 providing for the appointment of a successor
26 upon the resignation of the personal
27 representative; creating s. 733.5035, F.S.;
28 providing for the surrender of assets after
29 resignation; creating s. 733.5036, F.S.;
30 providing for accounting and discharge
31 following resignation; amending s. 733.504,

1 F.S.; revising language with respect to the
2 removal of the personal representative;
3 amending s. 733.505, F.S.; providing that a
4 petition for removal shall be filed in the
5 court having jurisdiction of the
6 administration; amending s. 733.506, F.S.;
7 revising language with respect to proceedings
8 for removal; creating s. 733.5061, F.S.;
9 providing for the appointment of a successor
10 upon removal of the personal representative;
11 repealing s. 733.507, F.S., relating to
12 administration following resignation or
13 removal; amending s. 733.508, F.S.; providing
14 for accounting and discharge upon removal;
15 amending s. 733.509, F.S.; revising language
16 with respect to surrender of assets upon
17 removal; amending s. 733.601, F.S.; revising
18 language with respect to time of accrual of
19 duties and powers; amending s. 733.602, F.S.,
20 relating to the general duties of a personal
21 representative; amending s. 733.603, F.S.,
22 relating to when a personal representative may
23 proceed without court order; amending s.
24 733.604, F.S.; revising language with respect
25 to inventory; repealing s. 733.605, F.S.,
26 relating to appraisers; creating s. 733.6065,
27 F.S.; providing for the opening of a
28 safe-deposit box; amending s. 733.607, F.S.;
29 revising language with respect to the
30 possession of the estate; amending s. 733.608,
31 F.S.; revising language with respect to the

1 general power of the personal representative;
2 amending s. 733.609, F.S.; revising language
3 with respect to improper exercise of power and
4 the breach of fiduciary duty; amending s.
5 733.610, F.S., relating to the sale,
6 encumbrance, or transaction involving a
7 conflict of interest; amending s. 733.611,
8 F.S.; revising language with respect to persons
9 dealing with the personal representative;
10 amending s. 733.612, F.S.; revising language
11 with respect to transactions authorized for the
12 personal representatives and exceptions
13 thereto; amending s. 733.6121, F.S., relating
14 to powers of the personal representative with
15 respect to environmental or human health laws
16 affecting property subject to administration;
17 amending s. 733.613, F.S.; revising language
18 with respect to the personal representatives'
19 right to sell real property; amending s.
20 733.614, F.S., relating to the powers and
21 duties of a successor personal representative;
22 amending s. 733.615, F.S.; revising language
23 with respect to joint personal representatives;
24 amending s. 733.616, F.S.; revising language
25 with respect to the powers of the surviving
26 personal representatives; amending s. 733.617,
27 F.S.; revising language with respect to
28 compensation of the personal representative;
29 amending s. 733.6171, F.S.; revising language
30 with respect to compensation of the attorney
31 for the personal representative; amending s.

1 733.6175, F.S.; revising language with respect
2 to proceedings for review of employment of
3 agents and compensation of personal
4 representatives and employees of the estate;
5 amending s. 733.619, F.S., relating to the
6 individual liability of the personal
7 representative; amending s. 733.701, F.S.;
8 revising language with respect to notifying
9 creditors; correcting cross references;
10 amending s. 733.702, F.S.; revising language
11 with respect to limitations on presentation of
12 claims; amending s. 733.703, F.S.; revising
13 language with respect to the form and manner of
14 presenting a claim; amending s. 733.704, F.S.,
15 relating to amendment of claims; amending s.
16 733.705, F.S.; revising language with respect
17 to payment of and objection to claims; amending
18 s. 733.707, F.S.; revising language with
19 respect to the order of payment of expenses and
20 obligations; amending s. 733.708, F.S.;
21 revising language with respect to compromise;
22 amending s. 733.710, F.S., relating to claims
23 against estates; amending s. 733.801, F.S.;
24 providing that the personal representative
25 shall pay as an expense of administration
26 certain costs; amending s. 733.802, F.S.;
27 revising language with respect to proceedings
28 for compulsory payment of devises or
29 distributive interest; amending s. 733.803,
30 F.S., relating to encumbered property; amending
31 s. 733.805, F.S.; revising language with

1 respect to the order in which assets are
2 appropriated; amending s. 733.806, F.S.,
3 relating to advancement; amending s. 733.808,
4 F.S.; revising language with respect to death
5 benefits and disposition of proceeds; amending
6 s. 733.809, F.S., relating to right of
7 retainer; amending s. 733.810, F.S.; revising
8 language with respect to distribution in kind
9 and valuation; amending s. 733.811, F.S.;
10 revising language with respect to the right or
11 title of distributee; amending s. 733.812,
12 F.S.; providing for improper distribution or
13 payment and liability of distributee; amending
14 s. 733.813, F.S., relating to protection of the
15 purchaser from the distributee; amending s.
16 733.814, F.S.; revising language with respect
17 to partition for the purpose of distribution;
18 amending s. 733.815, F.S.; providing for
19 private contracts among certain interested
20 persons; amending s. 733.816, F.S., relating to
21 the distribution of unclaimed property held by
22 the personal representative; amending s.
23 733.817, F.S.; revising language with respect
24 to apportionment of estate taxes; amending s.
25 733.901, F.S.; providing requirements with
26 respect to final discharge; amending s.
27 733.903, F.S.; revising language with respect
28 to subsequent administration; amending s.
29 734.101, F.S., relating to the foreign personal
30 representative; amending s. 734.102, F.S.;
31 revising language with respect to ancillary

1 administration; amending s. 734.1025, F.S.;
2 revising language with respect to the
3 nonresident decedent's testate estate with
4 property not exceeding a certain value in this
5 state; providing for the determination of
6 claims; amending s. 734.104, F.S., relating to
7 foreign wills; amending s. 734.201, F.S.,
8 relating to jurisdiction by act of a foreign
9 personal representative; amending s. 734.202,
10 F.S., relating to jurisdiction by act of
11 decedent; repealing s. 735.101, F.S., relating
12 to family administration and the nature of the
13 proceedings; repealing s. 735.103, F.S.,
14 relating to petition for family administration;
15 repealing s. 735.107, F.S., relating to family
16 administration distribution; amending s.
17 735.201, F.S.; increasing a monetary amount
18 with respect to summary administration;
19 amending s. 735.203, F.S.; revising language
20 with respect to the petition for summary
21 administration; amending s. 735.206, F.S.;
22 revising language with respect to summary
23 administration distribution; amending s.
24 735.2063, F.S.; revising language with respect
25 to notice to creditors; repealing s. 735.209,
26 F.S., relating to joinder of heirs, devisees,
27 or surviving spouse in summary administration;
28 amending s. 735.301, F.S., relating to
29 disposition without administration; amending s.
30 735.302, F.S.; revising language with respect
31 to income tax refunds in certain circumstances;

1 creating s. 737.208, F.S.; prohibiting
2 distribution pending outcome of contest;
3 providing exceptions; amending s. 737.3054,
4 F.S.; revising language with respect to
5 trustee's duty to pay expenses and obligations
6 of grantor's estate; amending s. 737.306, F.S.;
7 revising language with respect to personal
8 liability of trustee; creating s. 737.3061,
9 F.S.; providing for limitation on actions
10 against certain trusts; amending s. 737.308,
11 F.S.; revising language with respect to notice
12 of trust; amending ss. 215.965, 660.46, and
13 737.111, F.S.; correcting cross references;
14 directing the Division of Statutory Revision
15 and Indexing to change the title of certain
16 parts of the Probate Code; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Paragraphs (b) and (c) of subsection (1) of
22 section 63.172, Florida Statutes, are amended to read:

23 63.172 Effect of judgment of adoption.--

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

27 (b) It terminates all legal relationships between the
28 adopted person and the adopted person's relatives, including
29 the birth parents, except a birth parent who is a petitioner
30 or who is married to a petitioner, so that the adopted person
31 thereafter is a stranger to his or her former relatives for

1 all purposes, including ~~inheritance~~ and the interpretation or
2 construction of documents, statutes, and instruments, whether
3 executed before or after entry of the adoption judgment, that
4 do not expressly include the adopted person by name or by some
5 designation not based on a parent and child or blood
6 relationship, except that rights of inheritance shall be as
7 provided in the Florida Probate Code.

8 (c) Except for rights of inheritance, it creates the
9 relationship between the adopted person and the petitioner and
10 all relatives of the petitioner that would have existed if the
11 adopted person were a blood descendant of the petitioner born
12 within wedlock. This relationship shall be created for all
13 purposes, including ~~inheritance~~ and applicability of statutes,
14 documents, and instruments, whether executed before or after
15 entry of the adoption judgment, that do not expressly exclude
16 an adopted person from their operation or effect.

17 Section 2. Section 409.9101, Florida Statutes, is
18 amended to read:

19 409.9101 Recovery for payments made on behalf of
20 Medicaid-eligible persons.--

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

23 (2) It is the intent of the Legislature by this
24 section to supplement Medicaid funds that are used to provide
25 medical services to eligible persons. Medicaid estate recovery
26 shall ~~generally~~ be accomplished by the agency through the
27 filing a statement of claim ~~claims~~ against the estate of a
28 ~~estates of~~ deceased Medicaid recipient ~~recipients~~ as provided
29 in part VII of chapter 733. Recovery ~~The recoveries~~ shall be
30 made pursuant to federal authority in s. 13612 of the Omnibus
31

1 Budget Reconciliation Act of 1993, which amends s. 1917(b)(1)
2 of the Social Security Act, 42 U.S.C. s. 1396p(b)(1).

3 ~~(3) Pursuant to s. 733.212(4)(a), the personal~~
4 ~~representative of the estate of the decedent shall serve the~~
5 ~~agency with a copy of the notice of administration of the~~
6 ~~estate within 3 months after the first publication of the~~
7 ~~notice, unless the agency has already filed a claim pursuant~~
8 ~~to this section.~~

9 ~~(3)(4)~~ The acceptance of public medical assistance, as
10 defined by Title XIX (Medicaid) of the Social Security Act,
11 including mandatory and optional supplemental payments under
12 the Social Security Act, shall create a debt to claim, as
13 ~~defined in s. 731.201, in favor of the agency in as an~~
14 ~~interested person as defined in s. 731.201. The claim amount~~
15 ~~is calculated as the total amount paid to or for the benefit~~
16 ~~of the recipient for medical assistance on behalf of the~~
17 ~~recipient after the recipient he or she reached 55 years of~~
18 ~~age. Payment of benefits to a person under the age of 55 years~~
19 ~~does not create a debt. Upon filing of a statement of claim in~~
20 ~~the probate proceeding, the agency shall be an interested~~
21 ~~person as defined in s. 731.201 to the same extent as other~~
22 ~~estate claimants~~ There is no claim under this section against
23 ~~estates of recipients who had not yet reached 55 years of age.~~

24 ~~(4)(5)~~ At the time of filing the claim, The agency may
25 ~~reserve the right to amend the claim~~ as a matter of right up
26 to 1 year after the last date medical services were rendered
27 to the decedent ~~amounts based on medical claims submitted by~~
28 ~~providers subsequent to the agency's initial claim~~
29 ~~calculation.~~

30 ~~(5)(6)~~ The claim of the agency shall be the current
31 ~~total allowable amount of Medicaid payments as denoted in the~~

1 ~~agency's provider payment processing system at the time the~~
2 ~~agency's claim or amendment is filed.~~ The agency's provider
3 processing system reports shall be admissible as prima facie
4 evidence in substantiating the agency's claim.

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

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

- 10 (a) A spouse;
- 11 (b) A child or children under 21 years of age; or
- 12 (c) A child or children who are blind or permanently
13 and totally disabled pursuant to the eligibility requirements
14 of Title XIX of the Social Security Act.

15 ~~(7)(9) In accordance with s. 4, Art. X of the State~~
16 ~~Constitution, No debt claim under this section shall be~~
17 ~~enforced against any property that is determined to be exempt~~
18 ~~from the claims of creditors under the constitution or laws of~~
19 ~~this state the homestead of the deceased Medicaid recipient~~
20 ~~and is determined to be exempt from the claims of creditors of~~
21 ~~the deceased Medicaid recipient.~~

22 ~~(8)(10)~~ The agency shall not recover from an estate if
23 doing so would cause undue hardship for the qualified heirs,
24 as defined in s. 731.201. The personal representative of an
25 estate and any heir may request that the agency waive recovery
26 of any or all of the debt when recovery would create a
27 hardship. A hardship does not exist solely because recovery
28 will prevent any heirs from receiving an anticipated
29 inheritance. The following criteria shall be considered by the
30 agency in reviewing a hardship request:

- 31 (a) The heir:

- 1 1. Currently resides in the residence of the decedent;
2 2. Resided there at the time of the death of the
3 decedent;
4 3. Has made the residence his or her primary residence
5 for the 12 months immediately preceding the death of the
6 decedent; and
7 4. Owns no other residence;
8 (b) The heir would be deprived of food, clothing,
9 shelter, or medical care necessary for the maintenance of life
10 or health;
11 (c) The heir can document that he or she provided
12 full-time care to the recipient which delayed the recipient's
13 entry into a nursing home. The heir must be either the
14 decedent's sibling or the son or daughter of the decedent and
15 must have resided with the recipient for at least 1 year prior
16 to the recipient's death; or
17 (d) The cost involved in the sale of the property
18 would be equal to or greater than the value of the property.
19 (9)~~(11)~~ Instances arise in Medicaid estate-recovery
20 cases where the assets include a settlement of a claim against
21 a liable third party. The agency's claim under s. 409.910 must
22 be satisfied prior to including the settlement proceeds as
23 estate assets. The remaining settlement proceeds shall be
24 included in the estate and be available to satisfy the
25 Medicaid estate-recovery claim. The Medicaid estate-recovery
26 share shall be one-half of the settlement proceeds included in
27 the estate. Nothing in this subsection is intended to limit
28 the agency's rights against other assets in the estate not
29 related to the settlement. However, in no circumstances shall
30 the agency's recovery exceed the total amount of Medicaid
31 medical assistance provided to the recipient.

1 ~~(10)(12)~~ In instances where there are no liquid assets
2 to satisfy the Medicaid estate-recovery claim, if there is
3 nonexempt personal property or nonhomestead real property
4 which is not protected homestead and the costs of sale will
5 not exceed the proceeds, the property shall be sold to satisfy
6 the Medicaid estate-recovery claim. Real property shall not be
7 transferred to the agency in any instance.

8 ~~(11)(13)~~ The agency is authorized to adopt rules to
9 implement the provisions of this section.

10 Section 3. Section 655.936, Florida Statutes, is
11 amended to read:

12 655.936 Delivery of safe-deposit box contents or
13 property held in safekeeping to personal representative.--

14 (1) Subject to the provisions of subsection (3), the
15 lessor shall immediately deliver to a resident personal
16 representative, upon presentation of a certified copy of his
17 or her letters of authority, all property deposited with it by
18 the decedent for safekeeping, and shall grant the resident
19 personal representative access to any safe-deposit box in the
20 decedent's name and permit him or her to remove from such box
21 any part or all of the contents thereof.

22 (2) If a foreign personal representative of a deceased
23 lessee has been appointed by a court of any other state, a
24 lessor may, at its discretion, after 3 months from the
25 issuance to such foreign personal representative of his or her
26 letters of authority, deliver to such foreign personal
27 representative all properties deposited with it for
28 safekeeping and the contents of any safe-deposit box in the
29 name of the decedent if at such time the lessor has not
30 received written notice of the appointment of a personal
31 representative in this state, and such delivery is a valid

1 discharge of the lessor for all property or contents so
2 delivered. Such foreign personal representative shall furnish
3 the lessor with an affidavit setting forth facts showing the
4 domicile of the deceased lessee to be other than this state
5 and stating that there are no unpaid creditors of the deceased
6 lessee in this state, together with a certified copy of his or
7 her letters of authority. A lessor making delivery pursuant
8 to this subsection shall maintain in its files a receipt
9 executed by such foreign personal representative which
10 itemizes in detail all property so delivered.

11 (3) Notwithstanding the provisions of subsection (1),
12 after the death of a lessee of a safe-deposit box, the lessor
13 shall permit the initial opening of the safe-deposit box and
14 the removal of the contents of the safe-deposit box and the
15 removal of the contents of the safe-deposit box in accordance
16 with s. 733.6065.

17 ~~(4)(3)~~ A lessor is not liable for damages or penalty
18 by reason of any delivery made pursuant to this section.

19 ~~(4) Notwithstanding other provisions of this section,~~
20 ~~the initial opening of any safe-deposit box of the decedent~~
21 ~~must be conducted in the presence of an employee of the~~
22 ~~institution where the box is located and the personal~~
23 ~~representative. The inventory of the contents of the box also~~
24 ~~must be conducted in the presence of the employee and the~~
25 ~~personal representative, each of whom must verify the contents~~
26 ~~of the box by signing a copy of the inventory. The personal~~
27 ~~representative shall file the safe-deposit box inventory with~~
28 ~~the court within 10 days after the box is opened.~~

29 Section 4. Section 731.005, Florida Statutes, is
30 amended to read:

31

1 731.005 Short title.--Chapters 731-735 shall be known
2 and may be cited as the Florida Probate Code and ~~herein~~
3 referred to as "the code" ~~in this act~~.

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

6 731.011 Determination of substantive rights;
7 procedures.--The code ~~became Florida Probate Code~~ shall become
8 effective on January 1, 1976. The substantive rights of all
9 persons that ~~have~~ vested prior to January 1, 1976, shall be
10 determined as provided in former chapters 731-737 and 744-746
11 ~~as they existed prior to January 1, 1976~~. The procedures for
12 the enforcement of vested substantive rights ~~that have vested~~
13 ~~before January 1, 1976~~, shall be as provided in the Florida
14 Probate Rules ~~this code~~.

15 Section 6. Section 731.104, Florida Statutes, is
16 amended to read:

17 731.104 Verification of documents.--When verification
18 of a document is required in this code or by rule, the
19 document filed shall include an oath or affirmation as
20 provided in the Florida Probate Rules ~~or the following~~
21 ~~statement: "Under penalties of perjury, I declare that I have~~
22 ~~read the foregoing, and the facts alleged are true, to the~~
23 ~~best of my knowledge and belief."~~ Any person who shall
24 willfully includes ~~include~~ a false statement in the document
25 shall be guilty of perjury ~~and upon conviction shall be~~
26 ~~punished accordingly~~.

27 Section 7. Section 731.106, Florida Statutes, is
28 amended to read:

29 731.106 Assets of nondomiciliaries.--

30 (1) ~~For purposes of aiding the determination~~
31 ~~concerning location of assets that may be relevant in cases~~

1 ~~involving nondomiciliaries,~~A debt in favor of a
2 nondomiciliary, other than one evidenced by investment or
3 commercial paper or other instrument, is located in the county
4 where the debtor resides or, if the debtor is not ~~a person~~
5 ~~other than~~ an individual, at the place where the debtor has
6 its principal office. Commercial paper, investment paper, and
7 other instruments are located where the instrument is at the
8 time of death.

9 (2) When a nonresident decedent, whether or not ~~who is~~
10 a citizen of the United States, ~~or a citizen or subject of a~~
11 ~~foreign country~~ provides by ~~in her or his~~ will that the
12 testamentary disposition of ~~her or his~~ tangible or intangible
13 personal property having a situs within this state, or of ~~her~~
14 ~~or his~~ real property in this state, shall be construed and
15 regulated by the laws of this state, the validity and effect
16 of the dispositions shall be determined by Florida law. The
17 court may, and in the case of a decedent who was at the time
18 of death a resident of a foreign country the court shall,
19 direct the personal representative appointed in this state to
20 make distribution directly to those designated by the
21 decedent's will as beneficiaries of the tangible or intangible
22 property or to the persons entitled to receive the decedent's
23 personal estate under the laws of the decedent's domicile, ~~as~~
24 ~~the case may be.~~

25 Section 8. Section 731.107, Florida Statutes, is
26 repealed:

27 ~~731.107 Adversary proceedings.--The rules of civil~~
28 ~~procedure shall be applied in any adversary proceeding in~~
29 ~~probate.~~

30 Section 9. Section 731.110, Florida Statutes, is
31 amended to read:

1 731.110 Caveat; proceedings.--

2 (1) Any person, including a creditor, who ~~if any~~
3 ~~creditor of the estate of a decedent~~ is apprehensive that an
4 estate, either testate or intestate, will be administered
5 ~~without the creditor's knowledge, or if any person other than~~
6 ~~a creditor is apprehensive that an estate may be administered,~~
7 or that a will may be admitted to probate, ~~without the~~
8 person's knowledge, ~~he or she~~ may file a caveat with the
9 court.

10 (2) A ~~No~~ caveat shall contain ~~be effective unless it~~
11 ~~contains~~ the decedent's social security number, last known
12 residence address, and ~~or~~ date of birth, if they are known, as
13 ~~an identification number~~, a statement of the interest of the
14 caveator in the estate, the name and specific residence
15 address of the caveator, and, if the caveator, other than a
16 state agency, is a nonresident of the county, the additional
17 name and specific residence address of some person residing in
18 the county, or office address of a member of The Florida Bar
19 residing in Florida, designated as the agent of the caveator,
20 upon whom service may be made.

21 Section 10. Section 731.111, Florida Statutes, is
22 repealed:

23 ~~731.111 Notice to creditors.--~~

24 ~~(1) When a notice to creditors is required, a notice~~
25 ~~shall be published once a week for 2 consecutive weeks, two~~
26 ~~publications being sufficient, in a newspaper published in the~~
27 ~~county in which the estate is administered or, if there is no~~
28 ~~newspaper published in the county, in a newspaper of general~~
29 ~~circulation in that county. Proof of publication shall be~~
30 ~~filed. The notice shall notify all persons having claims or~~
31 ~~demands against the estate to file their claims with the clerk~~

1 ~~within the time periods set forth in s. 733.702 with respect~~
2 ~~to notice of administration, or be forever barred. The notice~~
3 ~~shall contain the name of the decedent, the file number of the~~
4 ~~estate, the designation and address of the court in which the~~
5 ~~proceedings are pending, the name and address of the person~~
6 ~~causing the notice to be published, and the name and address~~
7 ~~of his or her attorney, and state the date of first~~
8 ~~publication.~~

9 ~~(2) Notwithstanding the provisions of subsection (1),~~
10 ~~the Department of Revenue is not barred from filing a claim~~
11 ~~against the estate of a decedent for taxes due under chapter~~
12 ~~199 after the expiration of the time for filing claims~~
13 ~~provided in subsection (1), provided the department files its~~
14 ~~claim within 30 days after the service of the inventory or~~
15 ~~federal estate tax return on the department as provided in s.~~
16 ~~198.13, whichever shall last occur. Additionally, in the event~~
17 ~~that the information contained therein is amended or~~
18 ~~supplemented, the department has the right to file its claim~~
19 ~~or amend a previously filed claim within 30 days after the~~
20 ~~service of such information.~~

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

23 731.201 General definitions.--Subject to additional
24 definitions in subsequent chapters that are applicable to
25 specific chapters or parts, and unless the context otherwise
26 requires, in this code, in s. 409.9101, and in chapters 737,
27 738, and 744:

28 (1) "Authenticated," when referring to copies of
29 documents or judicial proceedings required to be filed with
30 the court under this code, shall mean a certified copy or a
31

1 copy authenticated according to the Federal Rules of Civil
2 Procedure ~~28 U.S.C. s. 1733 or s. 1741.~~

3 (2) "Beneficiary" means heir at law, in an intestate
4 estate, and devisee, in a testate estate. The term
5 "beneficiary" does not apply to an heir at law or a devisee
6 after that person's ~~his or her~~ interest in the estate has been
7 satisfied. In the case of a devise to an existing trust or
8 trustee, or to a trust or trustee described by will, in the
9 absence of a conflict of interest of the trust, the trustee is
10 a beneficiary of the estate. An owner of a beneficial interest
11 in the trust is a beneficiary of the trust and is, in the
12 absence of a conflict of interest of the trust, not a
13 beneficiary of the estate.

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

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

24 (5) "Clerk" means the clerk or deputy clerk of the
25 court.

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

27 (7) "Curator" means a person appointed by the court to
28 take charge of the estate of a decedent until letters are
29 issued.

30 (8) "Devise," when used as a noun, means a
31 testamentary disposition of real or personal property and,

1 when used as a verb, means to dispose of real or personal
2 property by will or trust. The term includes "gift," "give,"
3 "bequeath," "bequest," and "legacy." A devise is subject to
4 charges for debts, expenses, and taxes as provided in this
5 code, ~~or in the will, or the trust.~~

6 (9) "Devisee" means a person designated in a will or
7 trust to receive a devise. In the case of a devise to an
8 existing trust or trustee, or to a trustee of a trust
9 described by will, the trust or trustee is the devisee. The
10 beneficiaries of the trust are not devisees.

11 (10) "Distributee" means a person who has received
12 estate property from a personal representative or other
13 fiduciary other than as a creditor or purchaser. A
14 testamentary trustee is a distributee only to the extent of
15 distributed assets or increments to them remaining in the
16 trustee's ~~his or her~~ hands. A beneficiary of a testamentary
17 trust to whom the trustee has distributed property received
18 from a personal representative is a distributee. For purposes
19 of this provision, "testamentary trustee" includes a trustee
20 to whom assets are transferred by will, to the extent of the
21 devised assets.

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

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

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

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

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

31

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

3 (17) "Grantor" means one who creates or adds to a
4 trust and includes "settlor" or "trustor" and a testator who
5 creates or adds to a trust.

6 (18) "Heirs" or "heirs at law" means those persons,
7 including the surviving spouse, who are entitled under the
8 statutes of intestate succession to the property of a
9 decedent.

10 (19) "Incompetent" means a minor or a person
11 adjudicated incompetent.

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

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

30 (22) "Letters" means authority granted by the court to
31 the personal representative to act on behalf of the estate of

1 the decedent and refers to what has been known as letters
2 testamentary and letters of administration. All letters shall
3 be designated "letters of administration."

4 (23) "Other state" means any state of the United
5 States other than Florida and includes the District of
6 Columbia, the Commonwealth of Puerto Rico, and any territory
7 or possession subject to the legislative authority of the
8 United States.

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

11 (25) "Personal representative" means the fiduciary
12 appointed by the court to administer the estate and refers to
13 what has been known as an administrator, administrator cum
14 testamento annexo, administrator de bonis non, ancillary
15 administrator, ancillary executor, or executor.

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

18 (27) "Probate of will" means all steps necessary to
19 establish the validity of a will and to admit a will to
20 probate.

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

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

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

1 (31)~~(30)~~ "Residuary devise" means a devise of the
2 assets of the estate which remain after the provision for any
3 devise which is to be satisfied by reference to a specific
4 property or type of property, fund, sum, or statutory amount.
5 If the will contains no devise which is to be satisfied by
6 reference to a specific property or type of property, fund,
7 sum, or statutory amount, "residuary devise" or "residue"
8 means a devise of all assets remaining after satisfying the
9 obligations of the estate.

10 (32)~~(31)~~ "Security" means a security as defined in s.
11 517.021.

12 (33)~~(32)~~ "Security interest" means a security interest
13 as defined in s. 671.201.

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

31

1 ~~(35)~~⁽³⁴⁾ "Trustee" includes an original, additional,
2 surviving, or successor trustee, whether or not appointed or
3 confirmed by court.

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

9 Section 12. Section 731.301, Florida Statutes, is
10 amended to read:

11 731.301 Notice ~~method and time~~ proof.--

12 (1) ~~FORMAL NOTICE.--~~

13 ~~(a)~~ When ~~formal~~ notice to an interested person of a
14 petition or other proceeding is required, the notice shall be
15 given to the petitioner shall serve a copy of the petition to
16 any interested person or that person's her or his attorney as
17 provided in the Florida Probate Rules, if the interested
18 person has appeared by attorney or requested that notice be
19 sent to her or his attorney. The petition shall be served:

20 1. ~~By any form of mail or by any commercial delivery~~
21 ~~service approved by the chief judge of each judicial circuit,~~
22 ~~requiring a signed receipt, as follows:~~

23 a. ~~On the interested person's attorney of record, if~~
24 ~~any, or to the post-office address given in her or his demand~~
25 ~~for notice, if any;~~

26 b. ~~On an individual, other than an incompetent, by~~
27 ~~mailing a copy to the individual's dwelling house or usual~~
28 ~~place of abode or to the place where she or he regularly~~
29 ~~conducts her or his business or profession;~~

30 c. ~~On an incompetent person, by mailing a copy to the~~
31 ~~incompetent, to the person having custody of the incompetent,~~

1 ~~and to any legal guardian of the incompetent, at their~~
2 ~~respective dwelling houses, usual places of abode, or regular~~
3 ~~places of business or profession;~~

4 ~~d. On a corporation, by mailing a copy to the~~
5 ~~corporation at its last known address; or~~

6 ~~2. As provided in chapter 48; or~~

7 ~~3. In the circumstances provided in chapter 49, in the~~
8 ~~manner provided therein.~~

9 ~~(b) If there is no answer served on the petitioner~~
10 ~~within 20 days from the service of the petition, the petition~~
11 ~~shall be considered ex parte. If an answer is served, a~~
12 ~~hearing shall be set and reasonable notice given.~~

13 ~~(c) If service is made under subparagraph (a)2. or~~
14 ~~subparagraph (a)3., proof shall be made as provided in chapter~~
15 ~~48 or chapter 49. If service is made by mail under~~
16 ~~subparagraph (a)1., proof shall be by a verified statement of~~
17 ~~the person mailing service who shall attach the signed receipt~~
18 ~~or other evidence satisfactory to the court that delivery was~~
19 ~~made to, or refused by, the addressee or the addressee's~~
20 ~~agent.~~

21 (2)(d) Formal notice shall be sufficient to acquire
22 jurisdiction over the person receiving formal notice to the
23 extent of the person's interest in the estate.

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

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

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

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

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

8 Section 13. Section 731.303, Florida Statutes, is
9 amended to read:

10 731.303 Representation.--In proceedings involving
11 estates of decedents or trusts, the following apply:

12 (1) ~~Interests to be affected shall be described in~~
13 ~~pleadings that give information by name or class, by reference~~
14 ~~to the instrument creating the interests, or in another~~
15 ~~appropriate manner.~~

16 (1)~~(2)~~ Persons are bound by orders binding others in
17 the following cases:

18 (a) Orders binding the sole holder or all coholders of
19 a power of revocation or a general, special, or limited power
20 of appointment, including one in the form of a power of
21 amendment or revocation to the extent that the power has not
22 become unexercisable in fact, bind all persons to the extent
23 that their interests, as persons who may take by virtue of the
24 exercise or nonexercise of the power, are subject to the
25 power.

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

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

30 2. Orders binding a trustee bind beneficiaries of the
31 trust in proceedings to probate a will, in establishing or

1 adding to a trust, in reviewing the acts or accounts of a
2 prior fiduciary, and in proceedings involving creditors or
3 other third parties.

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

7 (c) An unborn or unascertained person, or a minor or
8 any other person under a legal disability, who is not
9 otherwise represented is bound by an order to the extent that
10 person's ~~his or her~~ interest is represented by another party
11 having the same or greater quality of interest in the
12 proceeding.

13 ~~(2)(3)~~ Orders binding a guardian of the person shall
14 not bind the ward.

15 ~~(3)(4)~~ Notice is required as follows:

16 (a) Notice as prescribed by the Florida Probate Rules
17 ~~s. 731.301~~ shall be given to every interested person, or to
18 one who can bind the interested person as described in
19 paragraph~~(1)(2)~~(a) or paragraph~~(1)(2)~~(b). Notice may be
20 given both to the interested person and to another who can
21 bind him or her.

22 (b) Notice is given to unborn or unascertained persons
23 who are not represented pursuant to paragraph~~(1)(2)~~(a) or
24 paragraph~~(1)(2)~~(b) by giving notice to all known persons
25 whose interests in the proceedings are the same as, or of a
26 greater quality than, those of the unborn or unascertained
27 persons.

28 ~~(4)(5)~~ If the court determines that representation of
29 the interest would otherwise be inadequate, the court may, at
30 any time, appoint a guardian ad litem to represent the
31 interests of an incapacitated ~~incompetent~~ person, an unborn or

1 unascertained person, a minor or any other person otherwise
2 under a legal disability, or a person whose identity or
3 address is unknown. If not precluded by conflict of interest,
4 a guardian ad litem may be appointed to represent several
5 persons or interests.

6 (5)~~(6)~~ Agreements, waivers, consents, approvals,
7 accounts, or other statements that fully disclose the matters
8 that ~~which~~ are the subject of the ~~such~~ accounts or statements
9 and that bind the sole holder or all coholders of a general,
10 special, or limited power of appointment, including a power of
11 amendment or revocation to the extent that the power has not
12 become unexercisable in fact, bind all persons to the extent
13 that their interests, as persons who may take by virtue of the
14 exercise or nonexercise of the power, are subject to the
15 power.

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

18 732.101 Intestate estate.--

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

21 Section 15. Section 732.102, Florida Statutes, is
22 amended to read:

23 732.102 Spouse's share of intestate estate ~~Share of~~
24 ~~spouse~~.--

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

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

28 (2)~~(b)~~ If there are surviving lineal descendants of
29 the decedent, all of whom are also lineal descendants of the
30 surviving spouse ~~also~~, the first \$60,000~~\$20,000~~ of the
31 intestate estate, plus one-half of the balance of the

1 intestate estate. Property allocated ~~hereunder~~ to the
2 surviving spouse to satisfy the \$60,000~~\$20,000~~ shall be
3 valued at the fair market value on the date of distribution
4 ~~the decedent's death.~~

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

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

10 Section 16. Paragraph (c) of subsection (4) and
11 subsection (5) of section 732.103, Florida Statutes, are
12 amended to read:

13 732.103 Share of other heirs.--The part of the
14 intestate estate not passing to the surviving spouse under s.
15 732.102, or the entire intestate estate if there is no
16 surviving spouse, descends as follows:

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

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

25 (5) If there is no kindred of either part, the whole
26 of the ~~such~~ property shall go to the kindred of the last
27 deceased spouse of the decedent as if the deceased spouse had
28 survived the decedent and then died intestate entitled to the
29 estate.

30 Section 17. Section 732.107, Florida Statutes, is
31 amended to read:

1 732.107 Escheat.--

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

5 ~~(2)(a) In this event, or when doubt exists about the~~
6 ~~existence of any person entitled to the estate, the personal~~
7 ~~representative shall institute a proceeding for the~~
8 ~~determination of beneficiaries, as provided in this code,~~
9 ~~within 1 year after letters have been issued to him or her,~~
10 ~~and notice shall be served on the Department of Legal Affairs.~~
11 ~~If the personal representative fails to institute the~~
12 ~~proceeding within the time fixed, it may be instituted by the~~
13 ~~Department of Legal Affairs.~~

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

19 ~~(3) If the court determines that there is no person~~
20 ~~entitled to the estate and that the estate escheats, the~~
21 ~~Property that escheats shall be sold as provided in the~~
22 ~~Florida Probate Rules and the proceeds paid to the Treasurer~~
23 ~~of the state and deposited by him or her in the State School~~
24 ~~Fund within a reasonable time to be fixed by the court.~~

25 ~~(3)(4)~~ At any time within 10 years after the payment
26 to the Treasurer ~~granting of letters~~, a person claiming to be
27 entitled to the proceeds ~~estate of the decedent~~ may petition
28 to reopen the administration to and assert entitlement ~~his or~~
29 ~~her rights to the proceeds~~ escheated property. If the claimant
30 is entitled to any of the estate of the decedent, the court
31 shall fix the amount to which he or she is entitled, and it

1 ~~shall be repaid to him or her with interest at the legal rate~~
2 ~~by the officials charged with the disbursement of state school~~
3 ~~funds. If no claim is timely asserted within the time fixed,~~
4 ~~the title of the state's rights to state to the property and~~
5 ~~the proceeds shall become absolute.~~

6 ~~(4)(5)~~ The Department of Legal Affairs shall represent
7 the state in all proceedings concerning escheated estates.

8 ~~(5)(6)(a)~~ If a person entitled to the proceeds funds
9 assigns the his or her rights to receive payment to an
10 attorney, Florida-certified public accountant, or private
11 investigative agency which is duly licensed to do business in
12 this state pursuant to a written agreement with that such
13 person, the Department of Banking and Finance is authorized to
14 make distribution in accordance with the such assignment.

15 (b) Payments made to an attorney, Florida-certified
16 public accountant, or private investigative agency shall be
17 promptly deposited into a trust or escrow account which is
18 regularly maintained by the attorney, Florida-certified public
19 accountant, or private investigative agency in a financial
20 institution authorized to accept such deposits and located in
21 this state.

22 (c) Distribution by the attorney, Florida-certified
23 public accountant, or private investigative agency to the
24 person entitled to the proceeds funds shall be made within 10
25 days following final credit of the deposit into the trust or
26 escrow account at the financial institution, unless a party to
27 the agreement protests the in writing such distribution in
28 writing before it is made.

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

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

3 Section 18. Section 732.1101, Florida Statutes, is
4 amended to read:

5 732.1101 Aliens.--Aliens shall have the same rights of
6 inheritance as citizens ~~No person is disqualified to take as~~
7 ~~an heir because he or she, or a person through whom he or she~~
8 ~~claims, is, or has been, an alien.~~

9 Section 19. Effective October 1, 2001, subsection (8)
10 of section 732.2025, Florida Statutes, is amended to read:

11 732.2025 Definitions.--As used in ss.
12 732.2025-732.2155, the term:

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

18 (a) The income and principal are distributable to or
19 for the benefit of the spouse for life in the discretion of
20 one or more trustees less than half of whom are ineligible
21 family trustees. For purposes of this paragraph, ineligible
22 family trustees include the decedent's grandparents and any
23 descendants of the decedent's grandparents who are not also
24 descendants of the surviving spouse; and

25 (b) During the spouse's life, no person other than the
26 spouse has the power to distribute income or principal to
27 anyone other than the spouse.

28
29 ~~(c) The requirement for court approval and the limitation on~~
30 ~~ineligible family trustees shall not apply if the aggregate~~
31 value of all the trust property as of the applicable valuation

1 ~~date~~ in all ~~a~~ qualifying special needs trusts for the spouse
2 ~~trust~~ is less than \$100,000. For purposes of this subsection,
3 value is determined on the "applicable valuation date" as
4 defined in s. 732.2095(1)(a).

5 Section 20. Effective October 1, 2001, subsection (2)
6 and paragraph (a) of subsection (5) of section 732.2035,
7 Florida Statutes, are amended to read:

8 732.2035 Property entering into elective
9 estate.--Except as provided in s. 732.2045, the elective
10 estate consists of the sum of the values as determined under
11 s. 732.2055 of the following property interests:

12 (2) The decedent's ownership interest in accounts or
13 securities registered in "Pay On Death," "Transfer On Death,"
14 "In Trust For," or coownership with right of survivorship
15 form. For this purpose, "decedent's ownership interest"
16 means, in the case of accounts or securities held in tenancy
17 by the entirety, one-half of the value of the account or
18 security, and in all other cases, that portion of the accounts
19 or securities which the decedent had, immediately before
20 death, the right to withdraw or use without the duty to
21 account to any person.

22 (5)(a) That portion of property, other than property
23 described in subsection (3), subsection (4), or subsection
24 (7), transferred by the decedent to the extent that at the
25 time of the decedent's death:

26 1. The decedent possessed the right to, or in fact
27 enjoyed the possession or use of, the income or principal of
28 the property; or

29 2. The principal of the property could, in the
30 discretion of any person other than the spouse of the
31

1 decedent, be distributed or appointed to or for the benefit of
2 the decedent.

3

4 In the application of this subsection, a right to payments
5 under a commercial or private ~~from an~~ annuity, an annuity
6 trust, a unitrust, or ~~under~~ a similar ~~contractual~~ arrangement
7 shall be treated as a right to that portion of the income of
8 the property necessary to equal the annuity, unitrust, or
9 other ~~contractual~~ payment.

10 Section 21. Effective October 1, 2001, subsection (1)
11 of section 732.2045, Florida Statutes, is amended to read:

12 732.2045 Exclusions and overlapping application.--

13 (1) EXCLUSIONS.--Section 732.2035 does not apply to:

14 (a) Except as provided in s. 732.2155(4), any transfer
15 of property by the decedent to the extent the transfer is
16 irrevocable before the effective date of this subsection or
17 after that date but before the date of the decedent's marriage
18 to the surviving spouse.

19 (b) Any transfer of property by the decedent to the
20 extent the decedent received adequate consideration in money
21 or money's worth for the transfer.

22 (c) Any transfer of property by the decedent made with
23 the written consent of the decedent's spouse. For this
24 purpose, spousal consent to split-gift treatment under the
25 United States gift tax laws does not constitute written
26 consent to the transfer by the decedent.

27 (d) The proceeds of any policy of insurance on the
28 decedent's life in excess of the net cash surrender value of
29 the policy whether payable to the decedent's estate, a trust,
30 or in any other manner.

31

1 (e) Any policy of insurance on the decedent's life
2 maintained pursuant to a court order.

3 (f) The decedent's one-half of the property to which
4 ss. 732.216-732.228 apply and real property that is community
5 property under the laws of the jurisdiction where it is
6 located.

7 (g) Property held in a qualifying special needs trust
8 on the date of the decedent's death.

9 (h) Property included in the gross estate of the
10 decedent for federal estate tax purposes solely because the
11 decedent possessed a general power of appointment.

12 (i) Property which constitutes the protected homestead
13 of the decedent whether held by the decedent or by a trust at
14 the decedent's death.

15 Section 22. Effective October 1, 2001, paragraph (a)
16 of subsection (5) of section 732.2055, Florida Statutes, is
17 amended to read:

18 732.2055 Valuation of the elective estate.--For
19 purposes of s. 732.2035, "value" means:

20 (5) In the case of all other property, the fair market
21 value of the property on the date of the decedent's death,
22 computed after deducting from the total value of the property:

23 (a) All claims, ~~other than claims for funeral~~
24 ~~expenses~~, paid or payable from the elective estate; and

25 Section 23. Effective October 1, 2001, subsection (2)
26 of section 732.2075, Florida Statutes, is amended to read:

27 732.2075 Sources from which elective share payable;
28 abatement.--

29 (2) If, after the application of subsection (1), the
30 elective share is not fully satisfied, the unsatisfied balance
31

1 shall be apportioned among the direct recipients of the
2 remaining elective estate in the following order of priority:

3 (a) Class 1.--The decedent's probate estate and
4 revocable trusts.

5 (b) Class 2.--Recipients of property interests, other
6 than protected charitable interests, included in the elective
7 estate under s. 732.2035(2), (3), or (6) and, to the extent
8 the decedent had at the time of death the power to designate
9 the recipient of the property, property interests, other than
10 protected charitable interests, included under s. 732.2035(5)
11 and (7).

12 (c) Class 3.--Recipients of all other property
13 interests, other than protected charitable interests, included
14 in the elective estate ~~except interests for which a charitable~~
15 ~~deduction with respect to the transfer of the property was~~
16 ~~allowed or allowable to the decedent or the decedent's spouse~~
17 ~~under the United States gift tax laws.~~

18 (d) Class 4.--Recipients of protected charitable lead
19 interests, but only to the extent and at such times that
20 contribution is permitted without disqualifying the charitable
21 interest in that property for a deduction under the United
22 States gift tax laws.

23
24 For purposes of this subsection, a protected charitable
25 interest is any interest for which a charitable deduction with
26 respect to the transfer of the property was allowed or
27 allowable to the decedent or the decedent's spouse under the
28 United States gift tax laws. A protected charitable lead
29 interest is a protected charitable interest where one or more
30 deductible interests in charity precede some other
31 nondeductible interest or interests in the property.

1 Section 24. Effective October 1, 2001, paragraph (a)
2 of subsection (1) and paragraph (a) of subsection (3) of
3 section 732.2085, Florida Statutes, are amended to read:

4 732.2085 Liability of direct recipients and
5 beneficiaries.--

6 (1) Only direct recipients of property included in the
7 elective estate and the beneficiaries of the decedent's
8 probate estate or of any trust that is a direct recipient, are
9 liable to contribute toward satisfaction of the elective
10 share.

11 (a) Within each of the classes described in s.
12 732.2075(2)(b), and (c), and (d), each direct recipient is
13 liable in an amount equal to the value, as determined under s.
14 732.2055, of the proportional part of the liability for all
15 members of the class.

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

19 (a) No further contribution toward satisfaction of the
20 elective share shall be required with respect to that ~~such~~
21 property.

22 Section 25. Effective October 1, 2001, paragraph (a)
23 of subsection (1) and paragraph (d) of subsection (2) of
24 section 732.2095, Florida Statutes, are amended to read:

25 732.2095 Valuation of property used to satisfy
26 elective share.--

27 (1) DEFINITIONS.--As used in this section, the term:

28 (a) "Applicable valuation date" means:

29 1. In the case of transfers in satisfaction of the
30 elective share, the date of the decedent's death.

31

1 2. In the case of property held in a qualifying
2 special needs trust on the date of the decedent's death, the
3 date of the decedent's death.

4 3. In the case of other property irrevocably
5 transferred to or for the benefit of the surviving spouse
6 during the decedent's life, the date of the transfer.

7 4. In the case of property distributed to the
8 surviving spouse by the personal representative, the date of
9 distribution.

10 5. Except as provided in subparagraphs 1., 2., and 3.,
11 in the case of property passing in trust for the surviving
12 spouse, the date or dates the trust is funded in satisfaction
13 of the elective share.

14 6. In the case of property described in s. 732.2035(2)
15 or (3) ~~or (4)~~, the date of the decedent's death.

16 7. In the case of proceeds of any policy of insurance
17 payable to the surviving spouse, the date of the decedent's
18 death.

19 8. In the case of amounts payable to the surviving
20 spouse under any plan or arrangement described in s.
21 732.2035(7), the date of the decedent's death.

22 9. In all other cases, the date of the decedent's
23 death or the date the surviving spouse first comes into
24 possession of the property, whichever occurs later.

25 (2) Except as provided in this subsection, the value
26 of property for purposes of s. 732.2075 is the fair market
27 value of the property on the applicable valuation date.

28 (d) If the surviving spouse has an interest in a trust
29 that does not meet the requirements of either an elective
30 share trust or a qualifying special needs trust, the value of
31 the spouse's interest is the transfer tax value of the

1 interest on the applicable valuation date; however, the
2 aggregate value of all of the spouse's interests in the trust
3 shall not exceed one-half of the value of the trust principal
4 on the applicable valuation date.

5 Section 26. Effective October 1, 2001, section
6 732.2105, Florida Statutes, is amended to read:

7 732.2105 Effect of election on other interests.--

8 ~~(1)~~ The elective share shall be in addition to
9 homestead, exempt property, and allowances as provided in part
10 IV.

11 ~~(2) If an election is filed, the balance of the~~
12 ~~elective estate, after the application of s. 732.2145(1),~~
13 ~~shall be administered as though the surviving spouse had~~
14 ~~predeceased the decedent.~~

15 Section 27. Effective October 1, 2001, subsection (2)
16 of section 732.2125, Florida Statutes, is amended to read:

17 732.2125 Right of election; by whom exercisable.--The
18 right of election may be exercised:

19 (2) With approval of the court having jurisdiction of
20 the probate proceeding by an attorney in fact or a guardian of
21 the property of the surviving spouse, ~~with approval of the~~
22 ~~court having jurisdiction of the probate proceeding.~~ The court
23 shall determine the election as the best interests of the
24 surviving spouse, during the spouse's probable lifetime,
25 require.

26 Section 28. Effective October 1, 2001, section
27 732.2135, Florida Statutes, is amended to read:

28 732.2135 Time of election; extensions; withdrawal.--

29 (1) Except as provided in subsection (2), the election
30 must be filed within the earlier of 6 months of the date of
31 service of a copy of ~~the first publication of~~ notice of

1 administration on the surviving spouse, or an attorney in fact
2 or guardian of the property of the surviving spouse, or 2
3 years after the date of the decedent's death.

4 (2) Within the period provided in subsection (1), the
5 surviving spouse or an attorney in fact or guardian of the
6 property of the surviving spouse may petition the court for an
7 extension of time for making an election. ~~After notice and~~
8 ~~hearing, the court~~ For good cause shown the court may extend
9 the time for election. If the court grants the petition for an
10 extension, the election must be filed within the time allowed
11 by the extension.

12 (3) The surviving spouse or an attorney in fact,
13 guardian of the property, or personal representative of the
14 surviving spouse may withdraw an election at any time within 8
15 months of the decedent's death and before the court's order of
16 contribution. If an election is withdrawn, the court may
17 assess attorney's fees and costs against the surviving spouse
18 or the surviving spouse's estate.

19 (4) A petition for an extension of the time for making
20 the election or for approval to make the election shall toll
21 the time for making the election.

22 Section 29. Effective October 1, 2001, subsections (1)
23 and (4) of section 732.2145, Florida Statutes, are amended to
24 read:

25 732.2145 Order of contribution; personal
26 representative's duty to collect contribution.--

27 (1) The court shall determine the elective share and
28 ~~shall order~~ contribution. All Contributions shall ~~are to~~ bear
29 interest at the statutory rate ~~provided in s. 55.03(1)~~
30 beginning 90 days after ~~from~~ the ~~date of the~~ order of
31

1 contribution. The order ~~of contribution~~ is prima facie correct
2 in proceedings in any court or jurisdiction.

3 (4) Nothing in this section limits the independent
4 right of the surviving spouse to collect the elective share as
5 provided in the order of contribution, and that right is
6 hereby conferred. If the surviving spouse brings an action to
7 enforce the ~~an order of contribution~~, the judgment shall
8 include the surviving spouse's costs and reasonable attorney's
9 fees.

10 Section 30. Effective October 1, 2001, subsection (4)
11 of section 732.2155, Florida Statutes, is amended, and
12 subsection (6) is added to said section, to read:

13 732.2155 Effective date; effect of prior waivers;
14 transition rules.

15 (4) Notwithstanding anything in s. 732.2045(1)(a) to
16 the contrary, any trust created by the decedent before the
17 effective date of ss. 732.201-732.2145 ~~this section~~ that meets
18 the requirements of an elective share trust is treated as if
19 the decedent created the trust after the effective date of
20 these sections ~~this subsection~~ and in satisfaction of the
21 elective share.

22 (6) Sections 732.201-732.2155 do not affect any
23 interest in property held, as of the decedent's death, in a
24 trust, whether revocable or irrevocable, if:

25 (a) The property was an asset of the trust at all
26 times between October 1, 1999 and the date of the decedent's
27 death;

28 (b) The decedent was not married to the decedent's
29 surviving spouse when the property was transferred to the
30 trust; and

31

1 (c) The property was a nonmarital asset as defined in
2 s. 61.075 immediately prior to the decedent's death.

3 Section 31. Subsection (2) of section 732.218, Florida
4 Statutes, is amended to read:

5 732.218 Rebuttable presumptions.--In determining
6 whether ss. 732.216-732.228 apply to specific property, the
7 following rebuttable presumptions apply:

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

16 Section 32. Section 732.219, Florida Statutes, is
17 amended to read:

18 732.219 Disposition upon death.--Upon the death of a
19 married person, one-half of the property to which ss.
20 732.216-732.228 apply is the property of the surviving spouse
21 and is not subject to testamentary disposition by the decedent
22 or distribution under the laws of succession of this state.
23 One-half of that property is the property of the decedent and
24 is subject to testamentary disposition or distribution under
25 the laws of succession of this state. The decedent's one-half
26 of that ~~the~~ property is not in the elected estate ~~subject to~~
27 ~~the surviving spouse's right to elect against the will.~~

28 Section 33. Section 732.221, Florida Statutes, is
29 amended to read:

30 732.221 Perfection of title of personal representative
31 or beneficiary, ~~heir, or devisee~~.--If the title to any

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

13 Section 34. Subsections (1) and (2) of section
14 732.222, Florida Statutes, are amended to read:

15 732.222 Purchaser for value or lender.--

16 (1) If a surviving spouse has apparent title to
17 property to which ss. 732.216-732.228 apply, a purchaser for
18 value or a lender taking a security interest in the property
19 takes the ~~his or her~~ interest in the property free of any
20 rights of the personal representative or a beneficiary ~~an heir~~
21 ~~or devisee~~ of the decedent.

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

28 Section 35. Section 732.223, Florida Statutes, is
29 amended to read:

30 732.223 Perfection of title of surviving spouse.--If
31 the title to any property to which ss. 732.216-732.228 apply

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

16 Section 36. Section 732.302, Florida Statutes, is
17 amended to read:

18 732.302 Pretermitted children.--When a testator omits
19 to provide by ~~in his or her~~ will for any of his or her
20 children born or adopted after making the will and the child
21 has not received a part of the testator's property equivalent
22 to a child's part by way of advancement, the child shall
23 receive a share of the estate equal in value to that which the
24 child ~~he or she~~ would have received if the testator had died
25 intestate, unless:

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

28 (2) The testator had one or more children when the
29 will was executed and devised substantially all the estate to
30 the other parent of the pretermitted child and that other
31

1 parent survived the testator and is entitled to take under the
2 will.

3
4 The share of the estate that is assigned to the pretermitted
5 child shall be obtained in accordance with s. 733.805.

6 Section 37. Section 732.401, Florida Statutes, is
7 amended to read:

8 732.401 Descent of homestead.--

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

16 (2) Subsection (1) shall not apply to ~~if the decedent~~
17 ~~was domiciled in Florida and resided on real~~ property that the
18 decedent and the surviving spouse owned as tenants by the
19 entirety, ~~the real property shall not be homestead property.~~

20 Section 38. Subsection (2) of section 732.4015,
21 Florida Statutes, is amended to read:

22 732.4015 Devise of homestead.--

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

24 (a) "Owner" includes the grantor settlor of a trust
25 described in s. 733.707(3) that is evidenced by a written
26 instrument which is in existence at the time of the grantor's
27 settlor's death as if the interest held in trust was owned by
28 the grantor pursuant to which the settlor retained the right
29 ~~either alone or in conjunction with any other person to amend~~
30 ~~or revoke the trust at any time before his or her death.~~

31

1 (b) "Devise" includes a disposition by trust of that
2 portion of the trust estate which, if titled in the name of
3 the grantor ~~settlor~~ of the trust, would be the grantor's
4 ~~settlor's~~ homestead.

5 Section 39. Subsections (4) and (6) of section
6 732.402, Florida Statutes, are amended, and subsection (7) is
7 added to said section, to read:

8 732.402 Exempt property.--

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

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

25 (7) Property determined as exempt under this section
26 shall be excluded from the value of the estate before
27 residuary, intestate, or pretermitted or elective shares are
28 determined.

29 Section 40. Section 732.403, Florida Statutes, is
30 amended to read:

31

1 732.403 Family allowance.--In addition to protected
2 homestead and statutory entitlements ~~exempt property~~, if the
3 decedent was domiciled in Florida at the time of death, the
4 surviving spouse and the decedent's lineal heirs ~~whom~~ the
5 decedent was supporting or was obligated to support ~~or who~~
6 ~~were in fact being supported by him or her~~ are entitled to a
7 reasonable allowance in money out of the estate for their
8 maintenance during administration. ~~After notice and hearing,~~
9 The court may order this allowance to be paid as a lump sum or
10 in periodic installments. The allowance shall not exceed a
11 total of \$18,000~~\$6,000~~. It shall be paid to the surviving
12 spouse, if living, for the use of the spouse and dependent
13 lineal heirs. If the surviving spouse is not living, it shall
14 be paid to the lineal heirs or to the persons having their
15 care and custody. If any lineal heir is not living with the
16 surviving spouse, the allowance may be made partly to the
17 lineal heir or ~~his or her~~ guardian or other person having the
18 ~~lineal~~ heir's care and custody and partly to the surviving
19 spouse, as the needs of the dependent ~~lineal~~ heir and the
20 surviving spouse appear. ~~The family allowance shall have the~~
21 ~~priority established by s. 733.707.~~ The family allowance is
22 not chargeable against any benefit or share otherwise passing
23 to the surviving spouse or to the dependent lineal heirs ~~by~~
24 ~~intestate succession, elective share, or the will of the~~
25 ~~decedent~~, unless the will otherwise provides. The death of any
26 person entitled to a family allowance terminates the ~~his or~~
27 ~~her~~ right to that ~~the~~ part of the allowance not paid. For
28 purposes of this section, the term "lineal heir" or "lineal
29 heirs" means lineal ascendants and lineal descendants of the
30 decedent.
31

1 Section 41. Section 732.501, Florida Statutes, is
2 amended to read:

3 732.501 Who may make a will.--Any person who is of
4 sound mind and who is either 18 or more years of age or an
5 emancipated minor ~~18 or more years of age who is of sound mind~~
6 may make a will.

7 Section 42. Paragraph (a) of subsection (1) and
8 subsection (2) of section 732.502, Florida Statutes, are
9 amended to read:

10 732.502 Execution of wills.--Every will must be in
11 writing and executed as follows:

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

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

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

25 Section 43. Section 732.503, Florida Statutes, is
26 amended to read:

27 732.503 Self-proof of will.--

28 (1) A will or codicil executed in conformity with s.
29 ~~732.502(1) and (2)~~ may be made self-proved at the time of its
30 execution or at any subsequent date by the acknowledgment of
31 it by the testator and the affidavits of the witnesses, ~~each~~

1 made before an officer authorized to administer oaths and
2 evidenced by the officer's certificate attached to or
3 following the will, in substantially the following form:
4

5 STATE OF FLORIDA

6 COUNTY OF

7 I, _____, declare to the officer taking my
8 acknowledgment of this instrument, and to the subscribing
9 witnesses, that I signed this instrument as my will.

10

11

12

13

14

15 We, _____ and _____, have been sworn by the
16 officer signing below, and declare to that officer on our
17 oaths that the testator declared the instrument to be the
18 testator's will and signed it in our presence and that we each
19 signed the instrument as a witness in the presence of the
20 testator and of each other.

21

22

23

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27

28

29 Acknowledged and subscribed before me by the testator,
30 (type or print testator's name), who is personally known to me
31 or who has produced (state type of identification - see s.

1 117.05(5)(b)2.) as identification, and sworn to and subscribed
 2 before me by the witnesses, (type or print name of first
 3 witness) who is personally known to me or who has produced
 4 (state type of identification - see s. 117.05(5)(b)2.) as
 5 identification and (type or print name of second witness) who
 6 is personally known to me or who has produced (state type of
 7 identification - see s. 117.05(5)(b)2.) as identification, and
 8 subscribed by me in the presence of the testator and the
 9 subscribing witnesses, all on (date).

10 _____ (Signature of Officer)
 11 (Print, type, or stamp commissioned name and affix official
 12 seal)

13
 14 (2) A will or codicil made self-proved under former
 15 law, or executed in another state and made self-proved under
 16 the laws of that state, shall be considered as self-proved
 17 under this section.

18
 19 ~~STATE OF~~
 20 ~~COUNTY OF~~

21 ~~We,,, and the testator and the~~
 22 ~~witnesses, respectively, whose names are signed to the~~
 23 ~~attached or foregoing instrument, having been sworn, declared~~
 24 ~~to the undersigned officer that the testator, in the presence~~
 25 ~~of witnesses, signed the instrument as the testator's last~~
 26 ~~will (codicil), that the testator (signed) (or directed~~
 27 ~~another to sign for him or her), and that each of the~~
 28 ~~witnesses, in the presence of the testator and in the presence~~
 29 ~~of each other, signed the will as a witness.~~

30 _____ (Testator) ...
 31 _____ (Witness) ...

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 ~~...(Witness)...~~
 2 ~~Subscribed and sworn to before me by, the testator~~
 3 ~~who is personally known to me or who has produced ...(type of~~
 4 ~~identification)... as identification, and by, a witness~~
 5 ~~who is personally known to me or who has produced ...(type of~~
 6 ~~identification)... as identification, and by, a witness~~
 7 ~~who is personally known to me or who has produced ...(type of~~
 8 ~~identification)... as identification, on, ...(year)....~~
 9 ~~...(Signature of Notary Public)...~~
 10 ~~...(Print, type, or stamp commissioned name of Notary~~
 11 ~~Public)...~~

13 Section 44. Section 732.505, Florida Statutes, is
 14 amended to read:

15 732.505 Revocation by writing.--A will or codicil, or
 16 any part of either, is revoked:

17 (1) By a subsequent inconsistent will or codicil, even
 18 though the subsequent inconsistent will or codicil does not
 19 expressly revoke all previous wills or codicils, but the
 20 revocation extends only so far as the inconsistency ~~exists~~.

21 (2) By a subsequent ~~written~~ will, codicil, or other
 22 writing executed with the same formalities required for the
 23 execution of wills declaring the revocation, ~~if the same~~
 24 ~~formalities required for the execution of wills are observed~~
 25 ~~in the execution of the will, codicil, or other writing.~~

26 Section 45. Section 732.507, Florida Statutes, is
 27 amended to read:

28 732.507 Effect of subsequent marriage, birth, or
 29 dissolution of marriage.--

30 (1) Neither subsequent marriage, ~~nor subsequent~~
 31 ~~marriage and birth,~~ nor adoption of lineal descendants

1 shall revoke the prior will of any person, but the
2 pretermitted child or spouse shall inherit as set forth in ss.
3 732.301 and 732.302, regardless of the prior will.

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

13 Section 46. Paragraph (d) of subsection (2) and
14 subsections (3) and (6) of section 732.513, Florida Statutes,
15 are amended to read:

16 732.513 Devises to trustee.--

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

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

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

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

31

1 Section 47. Section 732.514, Florida Statutes, is
2 amended to read:

3 732.514 Vesting of devises.--The death of the testator
4 is the event that vests the right to devises unless the
5 testator in the ~~his or her~~ will has provided that some other
6 event must happen before a devise vests ~~shall vest~~.

7 Section 48. Section 732.515, Florida Statutes, is
8 amended to read:

9 732.515 Separate writing identifying devises of
10 tangible property.--A ~~will may refer to a~~ written statement or
11 list referred to in the decedent's will shall ~~to~~ dispose of
12 items of tangible personal property, other than property used
13 in trade or business, not otherwise specifically disposed of
14 by the will, ~~other than money and property used in trade or~~
15 ~~business~~. To be admissible under this section as evidence of
16 the intended disposition, the writing must be signed by the
17 testator and must describe the items and the devisees with
18 reasonable certainty. The writing ~~may be referred to as one~~
19 ~~in existence at the time of the testator's death.~~ It may be
20 prepared before or after the execution of the will. It may be
21 altered by the testator after its preparation. It may be a
22 writing that has no significance apart from its effect upon
23 the dispositions made by the will. If more than one otherwise
24 effective writing exists, then, to the extent of any conflict
25 among the writings, the provisions of the most recent writing
26 revoke the inconsistent provisions of each prior writing.

27 Section 49. Subsection (1) of section 732.6005,
28 Florida Statutes, is amended to read:

29 732.6005 Rules of construction and intention.--

30 (1) The intention of the testator as expressed in the
31 ~~his or her~~ will controls the legal effect of the testator's

1 dispositions. The rules of construction expressed in this
2 part shall apply unless a contrary intention is indicated by
3 the will.

4 Section 50. Section 732.601, Florida Statutes, is
5 amended to read:

6 732.601 Simultaneous Death Law.--Unless a contrary
7 intention appears in the governing instrument:

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

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

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

30 (4) When the insured and the beneficiary in a policy
31 of life or accident insurance have died and there is

1 insufficient evidence that they died otherwise than
2 simultaneously, the proceeds of the policy shall be
3 distributed as if the insured had survived the beneficiary.

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

8 Section 51. Section 732.603, Florida Statutes, is
9 amended to read:

10 732.603 Antilapse; deceased devisee; class
11 gifts.--Unless a contrary intention appears in the will:

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

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

17 (b) Fails to survive the testator, or

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

20
21 then the descendants of the devisee or beneficiary take per
22 stirpes in place of the deceased devisee or beneficiary. A
23 person who would have been a devisee under a class gift if
24 that person ~~he or she~~ had survived the testator shall be a
25 devisee for purposes of this section whether that person died
26 ~~his or her death occurred~~ before or after the execution of the
27 will.

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

31

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

3 (b) Fails to survive the testator, or

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

6
7 then the testamentary disposition to the devisee or
8 beneficiary shall lapse unless an intention to substitute
9 another ~~in his or her place~~ appears in the will.

10 Section 52. Subsection (2) of section 732.604, Florida
11 Statutes, is amended to read:

12 732.604 Failure of testamentary provision.--

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

19 Section 53. Section 732.605, Florida Statutes, is
20 amended to read:

21 732.605 Change in securities; accessions;
22 nonademption.--

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

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

28 (b) Any additional or other securities of the same
29 entity owned by the testator because of action initiated by
30 the entity, excluding any acquired by exercise of purchase
31 options.

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

4 (d) Securities of the same entity acquired as a result
5 of a plan of reinvestment.

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

10 Section 54. Subsection (1) and paragraph (d) of
11 subsection (2) of section 732.606, Florida Statutes, are
12 amended to read:

13 732.606 Nonademption of specific devisees in certain
14 cases; sale by guardian of the property; unpaid proceeds of
15 sale, condemnation, or insurance.--

16 (1) If specifically devised property is sold by a
17 guardian of the property ~~for the care and maintenance of the~~
18 ~~ward~~ or if a condemnation award or insurance proceeds are paid
19 to a guardian of the property ~~as a result of condemnation,~~
20 ~~fire, or casualty~~, the specific devisee has the right to a
21 general pecuniary devise equal to the net sale price, the
22 condemnation award, or the insurance proceeds. This
23 subsection does not apply if, subsequent to the sale,
24 condemnation, or casualty, it is adjudicated that the
25 disability of the testator has ceased and the testator
26 survives the adjudication by 1 year. The right of the specific
27 devisee under this subsection is reduced by any right
28 described in he or she has under subsection (2).

29 (2) A specific devisee has the right to the remaining
30 specifically devised property and:
31

1 (d) Property owned by the testator at ~~his or her~~ death
2 as a result of foreclosure, or obtained instead of
3 foreclosure, of the security for the specifically devised
4 obligation.

5 Section 55. Subsection (1) of section 732.701, Florida
6 Statutes, is amended to read:

7 732.701 Agreements concerning succession.--

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

18 Section 56. Section 732.702, Florida Statutes, is
19 amended to read:

20 732.702 Waiver of spousal ~~right to elect and of other~~
21 ~~rights.--~~

22 (1) The rights ~~right of election~~ of a surviving
23 spouse, ~~the rights of the surviving spouse as intestate~~
24 ~~successor or as a pretermitted spouse, and the rights of the~~
25 ~~surviving spouse to an elective share, intestate share,~~
26 ~~pretermitted share, homestead, exempt property, and family~~
27 ~~allowance, and preference in appointment as personal~~
28 ~~representative of an intestate estate or any of those rights~~
29 ~~them,~~ may be waived, wholly or partly, before or after
30 marriage, by a written contract, agreement, or waiver, signed
31 by the waiving party in the presence of two subscribing

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

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

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

31

1 Section 57. Subsections (2), (3), (4), (5), (6), and
2 (7) of section 732.801, Florida Statutes, are amended to read:

3 732.801 Disclaimer of interests in property passing by
4 will or intestate succession or under certain powers of
5 appointment.--

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

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

10 1. By intestate succession or devise.

11 2. Under descent of homestead, exempt property, or
12 family allowance or under s. 222.13.

13 3. Through exercise or nonexercise of a power of
14 appointment exercisable by will.

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

17 5. As beneficiary of a testamentary trust.

18 6. As a beneficiary of a testamentary gift to any
19 nontestamentary trust.

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

21 8. By succession in any manner described in this
22 subsection to a disclaimed interest.

23 9. In any manner not specifically enumerated herein
24 under a testamentary instrument.

25 (b) Disclaimer may be made for a minor, incompetent,
26 incapacitated person, or deceased beneficiary by the guardian
27 or personal representative if the court having jurisdiction of
28 the estate of the minor, incompetent, incapacitated person, or
29 deceased beneficiary upon petition finds that the disclaimer:

30
31

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

4 2. Is not detrimental to the best interests of the
5 beneficiary.

6
7 ~~The determination shall be made on a petition filed for that~~
8 ~~purpose and served on all interested persons.~~ If ordered by
9 the court, the guardian or personal representative shall
10 execute and record the disclaimer on behalf of the beneficiary
11 within the time and in the manner in which the beneficiary
12 could disclaim if ~~he or she were~~ living, of legal age, and
13 competent.

14 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

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

31

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

9 (4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER
10 INSTRUMENTS.--

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

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

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

1 disposition is made without actual notice of the facts
2 constituting the waiver or bar of ~~barring~~ the right to
3 disclaim.

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

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

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

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

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

29 3. Making any sale or other disposition of an interest
30 in real or personal property pursuant to judicial process by
31

1 the beneficiary before recording ~~he or she has recorded~~ a
2 disclaimer.

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

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

13 Section 58. Section 732.804, Florida Statutes, is
14 amended to read:

15 732.804 Provisions relating to disposition of the body
16 cremation.--Before issuance of letters, any person may carry
17 out written instructions of the decedent relating to the
18 decedent's body and funeral and burial arrangements.The fact
19 that cremation occurred pursuant to a written direction
20 ~~provision of a will or any written contract~~ signed by the
21 decedent that the ~~in which he or she expressed the intent that~~
22 ~~his or her~~ body be cremated is a complete defense to a cause
23 of action against any person acting or relying on that
24 direction ~~the personal representative or person providing the~~
25 ~~services.~~

26 Section 59. Section 732.901, Florida Statutes, is
27 amended to read:

28 732.901 Production of wills.--

29 (1) The custodian of a will must deposit the will with
30 the clerk of the court having venue of the estate of the
31 decedent within 10 days after receiving information that the

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

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

15 Section 60. Section 732.910, Florida Statutes, is
16 renumbered as section 765.510, Florida Statutes.

17 Section 61. Section 732.911, Florida Statutes, is
18 renumbered as section 765.511, Florida Statutes.

19 Section 62. Section 732.912, Florida Statutes, is
20 renumbered as section 765.512, Florida Statutes, and amended
21 to read:

22 765.512 ~~732.912~~ Persons who may make an anatomical
23 gift.--

24 (1) Any person who may make a will may give all or
25 part of his or her body for any purpose specified in s.
26 765.510 ~~732.910~~, the gift to take effect upon death. An
27 anatomical gift made by an adult donor and not revoked by the
28 donor as provided in s. 765.516 ~~732.916~~ is irrevocable and
29 does not require the consent or concurrence of any person
30 after the donor's death.

31

1 (2) If the decedent has executed an agreement
2 concerning an anatomical gift, including signing an organ and
3 tissue donor card, expressing his or her wish to donate in a
4 living will or advance directive, or signifying his or her
5 intent to donate on his or her driver's license or in some
6 other written form has indicated his or her wish to make an
7 anatomical gift, and in the absence of actual notice of
8 contrary indications by the decedent, the surrogate designated
9 by the decedent pursuant to part II of chapter 765 may give
10 all or any part of the decedent's body for any purpose
11 specified in s. 765.510 ~~732.910~~.

12 (3) If the decedent has not executed an agreement
13 concerning an anatomical gift or designated a surrogate
14 pursuant to part II of chapter 765 to make an anatomical gift
15 pursuant to the conditions of subsection (2), a member of one
16 of the classes of persons listed below, in the order of
17 priority stated and in the absence of actual notice of
18 contrary indications by the decedent or actual notice of
19 opposition by a member of the same or a prior class, may give
20 all or any part of the decedent's body for any purpose
21 specified in s. 765.510 ~~732.910~~:

- 22 (a) The spouse of the decedent;
23 (b) An adult son or daughter of the decedent;
24 (c) Either parent of the decedent;
25 (d) An adult brother or sister of the decedent;
26 (e) A grandparent of the decedent;
27 (f) A guardian of the person of the decedent at the
28 time of his or her death; or
29 (g) A representative ad litem who shall be appointed
30 by a court of competent jurisdiction forthwith upon a petition
31 heard ex parte filed by any person, which representative ad

1 litem shall ascertain that no person of higher priority exists
2 who objects to the gift of all or any part of the decedent's
3 body and that no evidence exists of the decedent's having made
4 a communication expressing a desire that his or her body or
5 body parts not be donated upon death;

6
7 but no gift shall be made by the spouse if any adult son or
8 daughter objects, and provided that those of higher priority,
9 if they are reasonably available, have been contacted and made
10 aware of the proposed gift, and further provided that a
11 reasonable search is made to show that there would have been
12 no objection on religious grounds by the decedent.

13 (4) If the donee has actual notice of contrary
14 indications by the decedent or, in the case of a spouse making
15 the gift, an objection of an adult son or daughter or actual
16 notice that a gift by a member of a class is opposed by a
17 member of the same or a prior class, the donee shall not
18 accept the gift.

19 (5) The person authorized by subsection (3) may make
20 the gift after the decedent's death or immediately before the
21 decedent's death.

22 (6) A gift of all or part of a body authorizes any
23 examination necessary to assure medical acceptability of the
24 gift for the purposes intended.

25 (7) Once the gift has been made, the rights of the
26 donee are paramount to the rights of others, except as
27 provided by s. 765.517 ~~732.917~~.

28 Section 63. Section 732.913, Florida Statutes, is
29 renumbered as section 765.513, Florida Statutes.

30
31

1 Section 64. Section 732.914, Florida Statutes, is
 2 renumbered as section 765.514, Florida Statutes, and amended
 3 to read:

4 765.514 ~~732.914~~ Manner of executing anatomical
 5 gifts.--

6 (1) A gift of all or part of the body under s.
 7 765.512(1)~~732.912(1)~~ may be made by will. The gift becomes
 8 effective upon the death of the testator without waiting for
 9 probate. If the will is not probated or if it is declared
 10 invalid for testamentary purposes, the gift is nevertheless
 11 valid to the extent that it has been acted upon in good faith.

12 (2)(a) A gift of all or part of the body under s.
 13 765.512(1)~~732.912(1)~~ may also be made by a document other
 14 than a will. The gift becomes effective upon the death of the
 15 donor. The document must be signed by the donor in the
 16 presence of two witnesses who shall sign the document in the
 17 donor's presence. If the donor cannot sign, the document may
 18 be signed for him or her at the donor's direction and in his
 19 or her presence and the presence of two witnesses who must
 20 sign the document in the donor's presence. Delivery of the
 21 document of gift during the donor's lifetime is not necessary
 22 to make the gift valid.

23 (b) The following form of written instrument shall be
 24 sufficient for any person to give all or part of his or her
 25 body for the purposes of this part:

26
 27 UNIFORM DONOR CARD

28
 29 The undersigned hereby makes this anatomical gift, if
 30 medically acceptable, to take effect on death. The words and
 31 marks below indicate my desires:

1 I give:

2 (a) any needed organs or parts;

3 (b) only the following organs or parts

4 ...[Specify the organ(s) or part(s)]...

5 for the purpose of transplantation, therapy, medical research,
6 or education;

7 (c) my body for anatomical study if needed.

8 Limitations or special wishes, if any:

9 ...(If applicable, list specific donee)...

10

11 Signed by the donor and the following witnesses in the

12 presence of each other:

13

14 ...(Signature of donor)... ...(Date of birth of donor)...

15 ...(Date signed)... ...(City and State)...

16

17 ...(Witness)... ...(Witness)...

18 ...(Address)... ...(Address)...

19

20 (3) The gift may be made to a donee specified by name.

21 If the donee is not specified by name, the gift may be

22 accepted by the attending physician as donee upon or following

23 the donor's death. If the gift is made to a specified donee

24 who is not available at the time and place of death, the

25 attending physician may accept the gift as donee upon or

26 following death in the absence of any expressed indication

27 that the donor desired otherwise. However, the Legislature

28 declares that the public policy of this state prohibits

29 restrictions on the possible recipients of an anatomical gift

30 on the basis of race, color, religion, sex, national origin,

31 age, physical handicap, health status, marital status, or

1 economic status, and such restrictions are hereby declared
2 void and unenforceable. The physician who becomes a donee
3 under this subsection shall not participate in the procedures
4 for removing or transplanting a part.

5 (4) Notwithstanding s. 765.517(2)~~732.917(2)~~, the
6 donor may designate in his or her will or other document of
7 gift the surgeon or physician to carry out the appropriate
8 procedures. In the absence of a designation or if the
9 designee is not available, the donee or other person
10 authorized to accept the gift may employ or authorize any
11 surgeon or physician for the purpose.

12 (5) Any gift by a member of a class designated in s.
13 765.512(3)~~732.912(3)~~ must be made by a document signed by
14 that person or made by that person's witnessed telephonic
15 discussion, telegraphic message, or other recorded message.

16 Section 65. Section 732.915, Florida Statutes, is
17 renumbered as section 765.515, Florida Statutes, and amended
18 to read:

19 765.515 ~~732.915~~ Delivery of document; organ and tissue
20 donor registry.--

21 (1) If a gift is made through the program established
22 by the Agency for Health Care Administration and the
23 Department of Highway Safety and Motor Vehicles under the
24 authority of s. 765.521 ~~732.921~~, the completed donor
25 registration card shall be delivered to the Department of
26 Highway Safety and Motor Vehicles and processed in a manner
27 specified in subsection (4), but delivery is not necessary to
28 the validity of the gift. If the donor withdraws the gift, the
29 records of the Department of Highway Safety and Motor Vehicles
30 shall be updated to reflect such withdrawal.

31

1 (2) If a gift is not made through the program
2 established by the Agency for Health Care Administration and
3 the Department of Highway Safety and Motor Vehicles under the
4 authority of s. 765.521 ~~732.921~~ and is made by the donor to a
5 specified donee, the document, other than a will, may be
6 delivered to the donee to expedite the appropriate procedures
7 immediately after death, but delivery is not necessary to the
8 validity of the gift. Such document may be deposited in any
9 hospital, bank, storage facility, or registry office that
10 accepts such documents for safekeeping or for facilitation of
11 procedures after death.

12 (3) On the request of any interested party upon or
13 after the donor's death, the person in possession shall
14 produce the document for examination.

15 (4) The Agency for Health Care Administration and the
16 Department of Highway Safety and Motor Vehicles shall develop
17 and implement an organ and tissue donor registry which shall
18 record, through electronic means, organ and tissue donation
19 documents submitted through the driver license identification
20 program or by other sources. The registry shall be maintained
21 in a manner which will allow, through electronic and
22 telephonic methods, immediate access to organ and tissue
23 donation documents 24 hours a day, 7 days a week. Hospitals,
24 organ and tissue procurement agencies, and other parties
25 identified by the agency by rule shall be allowed access
26 through coded means to the information stored in the registry.
27 Costs for the organ and tissue donor registry shall be paid
28 from the Florida Organ and Tissue Donor Education and
29 Procurement Trust Fund created by s. 765.52155 ~~732.92155~~.
30 Funds deposited into the Florida Organ and Tissue Donor
31 Education and Procurement Trust Fund shall be utilized by the

1 Agency for Health Care Administration for maintaining the
2 organ and tissue donor registry and for organ and tissue donor
3 education.

4 Section 66. Section 732.916, Florida Statutes, is
5 renumbered as section 765.516, Florida Statutes.

6 Section 67. Section 732.917, Florida Statutes, is
7 renumbered as section 765.517, Florida Statutes, and amended
8 to read:

9 765.517 ~~732.917~~ Rights and duties at death.--

10 (1) The donee, as specified under the provisions of s.
11 765.515(2)~~732.915(2)~~, may accept or reject the gift. If the
12 donee accepts a gift of the entire body or a part of the body
13 to be used for scientific purposes other than a transplant,
14 the donee may authorize embalming and the use of the body in
15 funeral services, subject to the terms of the gift. If the
16 gift is of a part of the body, the donee shall cause the part
17 to be removed without unnecessary mutilation upon the death of
18 the donor and before or after embalming. After removal of the
19 part, custody of the remainder of the body vests in the
20 surviving spouse, next of kin, or other persons under
21 obligation to dispose of the body.

22 (2) The time of death shall be determined by a
23 physician who attends the donor at the donor's death or, if
24 there is no such physician, the physician who certifies the
25 death. After death and in the absence of other qualified
26 personnel, this physician may participate in, but shall not
27 obstruct, the procedures to preserve the donor's organs or
28 tissues and shall not be paid or reimbursed by, nor be
29 associated with or employed by, an organ procurement
30 organization, tissue bank, or eye bank. This physician shall
31

1 not participate in the procedures for removing or
2 transplanting a part.

3 (3) The organ procurement organization, tissue bank,
4 or eye bank, or hospital medical professionals under the
5 direction thereof, may perform any and all tests to evaluate
6 the deceased as a potential donor and any invasive procedures
7 on the deceased body in order to preserve the potential
8 donor's organs. These procedures do not include the surgical
9 removal of an organ or penetrating any body cavity,
10 specifically for the purpose of donation, until a properly
11 executed donor card or document is located or, if a properly
12 executed donor card or document cannot be located, a person
13 specified in s. 765.512(3)~~732.912(3)~~ has been located, has
14 been notified of the death, and has granted legal permission
15 for the donation.

16 (4) All reasonable additional expenses incurred in the
17 procedures to preserve the donor's organs or tissues shall be
18 reimbursed by the organ procurement organization, tissue bank,
19 or eye bank.

20 (5) A person who acts in good faith and without
21 negligence in accord with the terms of this part or under the
22 anatomical gift laws of another state or a foreign country is
23 not liable for damages in any civil action or subject to
24 prosecution for his or her acts in any criminal proceeding.

25 (6) The provisions of this part are subject to the
26 laws of this state prescribing powers and duties with respect
27 to autopsies.

28 Section 68. Section 732.918, Florida Statutes, is
29 renumbered as section 765.518, Florida Statutes.

30 Section 69. Section 732.9185, Florida Statutes, is
31 renumbered as section 765.5185, Florida Statutes.

1 Section 70. Section 732.919, Florida Statutes, is
2 renumbered as section 765.519, Florida Statutes.

3 Section 71. Section 732.921, Florida Statutes, is
4 renumbered as section 765.521, Florida Statutes, and amended
5 to read:

6 765.521 ~~732.921~~ Donations as part of driver license or
7 identification card process.--

8 (1) The Agency for Health Care Administration and the
9 Department of Highway Safety and Motor Vehicles shall develop
10 and implement a program encouraging and allowing persons to
11 make anatomical gifts as a part of the process of issuing
12 identification cards and issuing and renewing driver licenses.
13 The donor registration card distributed by the Department of
14 Highway Safety and Motor Vehicles shall include the material
15 specified by s. 765.514(2)(b) ~~732.914(2)(b)~~ and may require
16 such additional information, and include such additional
17 material, as may be deemed necessary by that department. The
18 Department of Highway Safety and Motor Vehicles shall also
19 develop and implement a program to identify donors, which
20 program shall include notations on identification cards,
21 driver licenses, and driver records or such other methods as
22 the department may develop. This program shall include, after
23 an individual has completed a donor registration card, making
24 a notation on the front of the driver license or
25 identification card that clearly indicates the individual's
26 intent to donate the individual's organs or tissue. A notation
27 on an individual's driver license or identification card that
28 the individual intends to donate organs or tissues is deemed
29 sufficient to satisfy all requirements for consent to organ or
30 tissue donation. The Agency for Health Care Administration
31 shall provide the necessary supplies and forms through funds

1 appropriated from general revenue or contributions from
2 interested voluntary, nonprofit organizations. The Department
3 of Highway Safety and Motor Vehicles shall provide the
4 necessary recordkeeping system through funds appropriated from
5 general revenue. The Department of Highway Safety and Motor
6 Vehicles and the Agency for Health Care Administration shall
7 incur no liability in connection with the performance of any
8 acts authorized herein.

9 (2) The Department of Highway Safety and Motor
10 Vehicles, after consultation with and concurrence by the
11 Agency for Health Care Administration, shall adopt rules to
12 implement the provisions of this section according to the
13 provisions of chapter 120.

14 (3) Funds expended by the Agency for Health Care
15 Administration to carry out the intent of this section shall
16 not be taken from any funds appropriated for patient care.

17 Section 72. Section 732.9215, Florida Statutes, is
18 renumbered as section 765.5215, Florida Statutes.

19 Section 73. Section 732.92155, Florida Statutes, is
20 renumbered as section 765.52155, Florida Statutes.

21 Section 74. Section 732.9216, Florida Statutes, is
22 renumbered as section 765.5216, Florida Statutes.

23 Section 75. Section 732.922, Florida Statutes, is
24 renumbered as section 765.522, Florida Statutes, and amended
25 to read:

26 765.522 ~~732.922~~ Duty of certain hospital
27 administrators; liability of hospital administrators, organ
28 procurement organizations, eye banks, and tissue banks.--

29 (1) When used in this section, "hospital" means any
30 establishment licensed under chapter 395 except psychiatric
31 and rehabilitation hospitals.

1 (2) Where, based on accepted medical standards, a
2 hospital patient is a suitable candidate for organ or tissue
3 donation, the hospital administrator or the hospital
4 administrator's designee shall, at or near the time of death,
5 access the organ and tissue donor registry created by s.
6 765.515(4)~~732.915(4)~~ to ascertain the existence of a donor
7 card or document executed by the decedent. In the absence of a
8 donor card, organ donation sticker or organ donation imprint
9 on a driver's license, or other properly executed document,
10 the hospital administrator or designee shall request:

11 (a) The patient's health care surrogate, as permitted
12 in s. 765.512(2)~~732.912(2)~~; or

13 (b) If the patient does not have a surrogate, or the
14 surrogate is not reasonably available, any of the persons
15 specified in s. 765.512(3)~~732.912(3)~~, in the order and manner
16 of priority stated in s. 765.512(3)~~732.912(3)~~,
17
18 to consent to the gift of all or any part of the decedent's
19 body for any purpose specified in this part. Except as
20 provided in s. 765.512 ~~732.912~~, in the absence of actual
21 notice of opposition, consent need only be obtained from the
22 person or persons in the highest priority class reasonably
23 available.

24 (3) A gift made pursuant to a request required by this
25 section shall be executed pursuant to s. 765.514 ~~732.914~~.

26 (4) The Agency for Health Care Administration shall
27 establish rules and guidelines concerning the education of
28 individuals who may be designated to perform the request and
29 the procedures to be used in making the request. The agency
30 is authorized to adopt rules concerning the documentation of
31 the request, where such request is made.

1 (5) There shall be no civil or criminal liability
2 against any organ procurement organization, eye bank, or
3 tissue bank certified under s. 381.6022, or against any
4 hospital or hospital administrator or designee, when complying
5 with the provisions of this part and the rules of the Agency
6 for Health Care Administration or when, in the exercise of
7 reasonable care, a request for organ donation is inappropriate
8 and the gift is not made according to this part and the rules
9 of the Agency for Health Care Administration.

10 (6) The hospital administrator or a designee shall, at
11 or near the time of death of a potential organ donor, directly
12 notify the affiliated Health Care Financing Administration
13 designated organ procurement organization of the potential
14 organ donor. This organ procurement organization must offer
15 any organ from such a donor first to patients on a
16 Florida-based local or state organ sharing transplant list.
17 For the purpose of this subsection, the term "transplant list"
18 includes certain categories of national or regional organ
19 sharing for patients of exceptional need or exceptional match,
20 as approved or mandated by the United Network for Organ
21 Sharing. This notification must not be made to a tissue bank
22 or eye bank in lieu of the organ procurement organization
23 unless the tissue bank or eye bank is also a Health Care
24 Financing Administration designated organ procurement
25 organization.

26 Section 76. Paragraph (h) of subsection (3) of section
27 381.004, Florida Statutes, is amended to read:

28 381.004 HIV testing.--

29 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
30 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

31

1 (h) Notwithstanding the provisions of paragraph (a),
2 informed consent is not required:

3 1. When testing for sexually transmissible diseases is
4 required by state or federal law, or by rule including the
5 following situations:

6 a. HIV testing pursuant to s. 796.08 of persons
7 convicted of prostitution or of procuring another to commit
8 prostitution.

9 b. Testing for HIV by a medical examiner in accordance
10 with s. 406.11.

11 2. Those exceptions provided for blood, plasma,
12 organs, skin, semen, or other human tissue pursuant to s.
13 381.0041.

14 3. For the performance of an HIV-related test by
15 licensed medical personnel in bona fide medical emergencies
16 when the test results are necessary for medical diagnostic
17 purposes to provide appropriate emergency care or treatment to
18 the person being tested and the patient is unable to consent,
19 as supported by documentation in the medical record.
20 Notification of test results in accordance with paragraph (c)
21 is required.

22 4. For the performance of an HIV-related test by
23 licensed medical personnel for medical diagnosis of acute
24 illness where, in the opinion of the attending physician,
25 obtaining informed consent would be detrimental to the
26 patient, as supported by documentation in the medical record,
27 and the test results are necessary for medical diagnostic
28 purposes to provide appropriate care or treatment to the
29 person being tested. Notification of test results in
30 accordance with paragraph (c) is required if it would not be
31 detrimental to the patient. This subparagraph does not

1 authorize the routine testing of patients for HIV infection
2 without informed consent.

3 5. When HIV testing is performed as part of an autopsy
4 for which consent was obtained pursuant to s. 872.04.

5 6. For the performance of an HIV test upon a defendant
6 pursuant to the victim's request in a prosecution for any type
7 of sexual battery where a blood sample is taken from the
8 defendant voluntarily, pursuant to court order for any
9 purpose, or pursuant to the provisions of s. 775.0877, s.
10 951.27, or s. 960.003; however, the results of any HIV test
11 performed shall be disclosed solely to the victim and the
12 defendant, except as provided in ss. 775.0877, 951.27, and
13 960.003.

14 7. When an HIV test is mandated by court order.

15 8. For epidemiological research pursuant to s.
16 381.0032, for research consistent with institutional review
17 boards created by 45 C.F.R. part 46, or for the performance of
18 an HIV-related test for the purpose of research, if the
19 testing is performed in a manner by which the identity of the
20 test subject is not known and may not be retrieved by the
21 researcher.

22 9. When human tissue is collected lawfully without the
23 consent of the donor for corneal removal as authorized by s.
24 765.5185 ~~732.9185~~ or enucleation of the eyes as authorized by
25 s. 765.519 ~~732.919~~.

26 10. For the performance of an HIV test upon an
27 individual who comes into contact with medical personnel in
28 such a way that a significant exposure has occurred during the
29 course of employment or within the scope of practice and where
30 a blood sample is available that was taken from that
31 individual voluntarily by medical personnel for other

1 purposes. The term "medical personnel" includes a licensed or
2 certified health care professional; an employee of a health
3 care professional or health care facility; employees of a
4 laboratory licensed under chapter 483; personnel of a blood
5 bank or plasma center; a medical student or other student who
6 is receiving training as a health care professional at a
7 health care facility; and a paramedic or emergency medical
8 technician certified by the department to perform life-support
9 procedures under s. 401.23.

10 a. Prior to performance of an HIV test on a
11 voluntarily obtained blood sample, the individual from whom
12 the blood was obtained shall be requested to consent to the
13 performance of the test and to the release of the results.
14 The individual's refusal to consent and all information
15 concerning the performance of an HIV test and any HIV test
16 result shall be documented only in the medical personnel's
17 record unless the individual gives written consent to entering
18 this information on the individual's medical record.

19 b. Reasonable attempts to locate the individual and to
20 obtain consent shall be made and all attempts must be
21 documented. If the individual cannot be found, an HIV test may
22 be conducted on the available blood sample. If the individual
23 does not voluntarily consent to the performance of an HIV
24 test, the individual shall be informed that an HIV test will
25 be performed, and counseling shall be furnished as provided in
26 this section. However, HIV testing shall be conducted only
27 after a licensed physician documents, in the medical record of
28 the medical personnel, that there has been a significant
29 exposure and that, in the physician's medical judgment, the
30 information is medically necessary to determine the course of
31 treatment for the medical personnel.

1 c. Costs of any HIV test of a blood sample performed
2 with or without the consent of the individual, as provided in
3 this subparagraph, shall be borne by the medical personnel or
4 the employer of the medical personnel. However, costs of
5 testing or treatment not directly related to the initial HIV
6 tests or costs of subsequent testing or treatment shall not be
7 borne by the medical personnel or the employer of the medical
8 personnel.

9 d. In order to utilize the provisions of this
10 subparagraph, the medical personnel must either be tested for
11 HIV pursuant to this section or provide the results of an HIV
12 test taken within 6 months prior to the significant exposure
13 if such test results are negative.

14 e. A person who receives the results of an HIV test
15 pursuant to this subparagraph shall maintain the
16 confidentiality of the information received and of the persons
17 tested. Such confidential information is exempt from s.
18 119.07(1).

19 f. If the source of the exposure will not voluntarily
20 submit to HIV testing and a blood sample is not available, the
21 medical personnel or the employer of such person acting on
22 behalf of the employee may seek a court order directing the
23 source of the exposure to submit to HIV testing. A sworn
24 statement by a physician licensed under chapter 458 or chapter
25 459 that a significant exposure has occurred and that, in the
26 physician's medical judgment, testing is medically necessary
27 to determine the course of treatment constitutes probable
28 cause for the issuance of an order by the court. The results
29 of the test shall be released to the source of the exposure
30 and to the person who experienced the exposure.

31

1 11. For the performance of an HIV test upon an
2 individual who comes into contact with medical personnel in
3 such a way that a significant exposure has occurred during the
4 course of employment or within the scope of practice of the
5 medical personnel while the medical personnel provides
6 emergency medical treatment to the individual; or who comes
7 into contact with nonmedical personnel in such a way that a
8 significant exposure has occurred while the nonmedical
9 personnel provides emergency medical assistance during a
10 medical emergency. For the purposes of this subparagraph, a
11 medical emergency means an emergency medical condition outside
12 of a hospital or health care facility that provides physician
13 care. The test may be performed only during the course of
14 treatment for the medical emergency.

15 a. An individual who is capable of providing consent
16 shall be requested to consent to an HIV test prior to the
17 testing. The individual's refusal to consent, and all
18 information concerning the performance of an HIV test and its
19 result, shall be documented only in the medical personnel's
20 record unless the individual gives written consent to entering
21 this information on the individual's medical record.

22 b. HIV testing shall be conducted only after a
23 licensed physician documents, in the medical record of the
24 medical personnel or nonmedical personnel, that there has been
25 a significant exposure and that, in the physician's medical
26 judgment, the information is medically necessary to determine
27 the course of treatment for the medical personnel or
28 nonmedical personnel.

29 c. Costs of any HIV test performed with or without the
30 consent of the individual, as provided in this subparagraph,
31 shall be borne by the medical personnel or the employer of the

1 medical personnel or nonmedical personnel. However, costs of
2 testing or treatment not directly related to the initial HIV
3 tests or costs of subsequent testing or treatment shall not be
4 borne by the medical personnel or the employer of the medical
5 personnel or nonmedical personnel.

6 d. In order to utilize the provisions of this
7 subparagraph, the medical personnel or nonmedical personnel
8 shall be tested for HIV pursuant to this section or shall
9 provide the results of an HIV test taken within 6 months prior
10 to the significant exposure if such test results are negative.

11 e. A person who receives the results of an HIV test
12 pursuant to this subparagraph shall maintain the
13 confidentiality of the information received and of the persons
14 tested. Such confidential information is exempt from s.
15 119.07(1).

16 f. If the source of the exposure will not voluntarily
17 submit to HIV testing and a blood sample was not obtained
18 during treatment for the medical emergency, the medical
19 personnel, the employer of the medical personnel acting on
20 behalf of the employee, or the nonmedical personnel may seek a
21 court order directing the source of the exposure to submit to
22 HIV testing. A sworn statement by a physician licensed under
23 chapter 458 or chapter 459 that a significant exposure has
24 occurred and that, in the physician's medical judgment,
25 testing is medically necessary to determine the course of
26 treatment constitutes probable cause for the issuance of an
27 order by the court. The results of the test shall be released
28 to the source of the exposure and to the person who
29 experienced the exposure.

30 12. For the performance of an HIV test by the medical
31 examiner or attending physician upon an individual who expired

1 or could not be resuscitated while receiving emergency medical
2 assistance or care and who was the source of a significant
3 exposure to medical or nonmedical personnel providing such
4 assistance or care.

5 a. HIV testing may be conducted only after a licensed
6 physician documents in the medical record of the medical
7 personnel or nonmedical personnel that there has been a
8 significant exposure and that, in the physician's medical
9 judgment, the information is medically necessary to determine
10 the course of treatment for the medical personnel or
11 nonmedical personnel.

12 b. Costs of any HIV test performed under this
13 subparagraph may not be charged to the deceased or to the
14 family of the deceased person.

15 c. For the provisions of this subparagraph to be
16 applicable, the medical personnel or nonmedical personnel must
17 be tested for HIV under this section or must provide the
18 results of an HIV test taken within 6 months before the
19 significant exposure if such test results are negative.

20 d. A person who receives the results of an HIV test
21 pursuant to this subparagraph shall comply with paragraph (e).

22 13. For the performance of an HIV-related test
23 medically indicated by licensed medical personnel for medical
24 diagnosis of a hospitalized infant as necessary to provide
25 appropriate care and treatment of the infant when, after a
26 reasonable attempt, a parent cannot be contacted to provide
27 consent. The medical records of the infant shall reflect the
28 reason consent of the parent was not initially obtained. Test
29 results shall be provided to the parent when the parent is
30 located.

31

1 14. For the performance of HIV testing conducted to
2 monitor the clinical progress of a patient previously
3 diagnosed to be HIV positive.

4 15. For the performance of repeated HIV testing
5 conducted to monitor possible conversion from a significant
6 exposure.

7 Section 77. Paragraph (c) of subsection (2) of section
8 381.0041, Florida Statutes, is amended to read:

9 381.0041 Donation and transfer of human tissue;
10 testing requirements.--

11 (2) Notwithstanding the provisions of subsection (1),
12 written, informed consent to perform testing shall not be
13 required:

14 (c) When an unrevoked anatomical gift has been made
15 pursuant to s. 765.514 ~~732.914~~, by will or other written
16 instrument, and the donor is deceased or incompetent.

17 Section 78. Section 733.101, Florida Statutes, is
18 amended to read:

19 733.101 Venue of probate proceedings.--

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

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

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

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

30
31

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

4 (3) Whenever a ~~When any~~ proceeding is filed laying
5 venue in an improper ~~the wrong~~ county, the court may transfer
6 the action in the same manner as provided in the Florida Rules
7 of Civil Procedure. Any action taken by the court or the
8 parties before the transfer is not affected by ~~because of~~ the
9 improper venue.

10 Section 79. Subsection (2) of section 733.103, Florida
11 Statutes, is amended to read:

12 733.103 Effect of probate.--

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

19 Section 80. Section 733.104, Florida Statutes, is
20 amended to read:

21 733.104 Suspension of statutes of limitation in favor
22 of the personal representative.--

23 (1) If a person entitled to bring an action dies
24 before the expiration of the time limited for the commencement
25 of the action and the cause of action survives, the action may
26 be commenced by that person's ~~his or her~~ personal
27 representative before the later of the expiration of the time
28 limited for the commencement of the action or 12 months after
29 the ~~expiration and within 12 months from the date of the~~
30 decedent's death.

31

1 (2) If a person against whom a cause of action exists
2 dies before the expiration of the time limited for
3 commencement of the action and the cause of action survives,
4 if a claim is timely filed ~~shall be filed on the cause of~~
5 ~~action, and it shall then proceed as other claims against the~~
6 ~~estate, notwithstanding~~ the expiration of the time limited for
7 commencement of the action shall not apply.

8 Section 81. Section 733.105, Florida Statutes, is
9 amended to read:

10 733.105 Determination of beneficiaries.--

11 (1) When property passes by intestate succession or
12 ~~under a will to a person not sufficiently identified in the~~
13 ~~will~~ is unclear and there is ~~the personal representative is in~~
14 doubt about:

15 (a) Who is entitled to receive any part of the
16 ~~property it or part of it, or~~

17 (b) The shares and amounts that any person is entitled
18 to receive,

19
20 any interested person the personal representative may petition
21 the court to determine beneficiaries or their shares ~~file a~~
22 ~~petition setting forth the names, residences, and post office~~
23 ~~addresses of all persons in interest, except creditors of the~~
24 ~~decendent, so far as known or ascertainable by diligent search~~
25 ~~and inquiry, and the nature of their respective interests,~~
26 ~~designating those who are believed by the personal~~
27 ~~representative to be minors or incompetents and stating~~
28 ~~whether those so designated are under legal guardianship in~~
29 ~~this state. If the personal representative believes that~~
30 ~~there are, or may be, persons whose names are not known to him~~
31

1 ~~or her who have claims against, or interest in, the estate as~~
2 ~~heirs or devisees, the petition shall so state.~~

3 (2) ~~After formal notice and hearing, the court shall~~
4 ~~enter an order determining the heirs or devisees or the shares~~
5 ~~and amounts they are entitled to receive, or both. Any~~
6 personal representative who makes distribution or takes any
7 other action pursuant to an the order determining
8 beneficiaries shall be fully protected.

9 (3) ~~When it is necessary to determine who are or were~~
10 ~~the heirs or devisees, the court may make a determination, on~~
11 ~~the petition of any interested person, in like proceedings and~~
12 ~~after formal notice, irrespective of whether the estate of the~~
13 ~~deceased person is administered or, if administered, whether~~
14 ~~the administration of the estate has been closed or the~~
15 ~~personal representative discharged. A separate civil action~~
16 to determine beneficiaries may be brought ~~under this~~
17 ~~subsection~~ when an estate has not been ~~is not being~~
18 administered.

19 Section 82. Subsections (2), (3), and (4) of section
20 733.106, Florida Statutes, are amended to read:

21 733.106 Costs and attorney's attorney fees.--

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

29 (3) Any attorney who has rendered services to an
30 estate may be awarded reasonable compensation from the estate
31 ~~apply for an order awarding attorney fees, and after informal~~

1 ~~notice to the personal representative and all persons bearing~~
2 ~~the impact of the payment the court shall enter its order on~~
3 ~~the petition.~~

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

7 Section 83. Section 733.107, Florida Statutes, is
8 amended to read:

9 733.107 Burden of proof in contests.--In all
10 proceedings contesting the validity of a will, the burden
11 shall be upon the proponent of the will to establish prima
12 facie its formal execution and attestation. Thereafter, the
13 contestant shall have the burden of establishing the grounds
14 on which the probate of the will is opposed or revocation is
15 sought.

16 Section 84. Section 733.109, Florida Statutes, is
17 amended to read:

18 733.109 Revocation of probate.--

19 (1) A proceeding to revoke the probate of a will shall
20 be brought in the court having jurisdiction over the
21 administration.Any interested person, including a beneficiary
22 under a prior will, unless ~~except those~~ barred under s.
23 733.212 or s. 733.2123, may commence the proceeding,before
24 final discharge of the personal representative, ~~petition the~~
25 ~~court in which the will was admitted to probate for revocation~~
26 ~~of probate.~~

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

29 ~~(b) The petition shall be served upon the personal~~
30 ~~representative and all interested persons by formal notice,~~
31

1 ~~and thereafter proceedings shall be conducted as an adversary~~
2 ~~proceeding under the rules of civil procedure.~~

3 (2) Pending the determination of any petition for
4 revocation of probate, the personal representative shall
5 proceed with the administration of the estate as if no
6 revocation proceeding had been commenced, except that no
7 distribution may be made to beneficiaries ~~devisees~~ in
8 contravention of the rights of those who, but for the will,
9 would be entitled to the property disposed of.

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

14 Section 85. Subsection (3) of section 733.201, Florida
15 Statutes, is amended to read:

16 733.201 Proof of wills.--

17 (3) If it appears to the court that the attesting
18 witnesses cannot be found or that they have become incompetent
19 after the execution of the will or their testimony cannot be
20 obtained within a reasonable time, a will may be admitted to
21 probate upon the oath of the personal representative nominated
22 by the will as provided in subsection (2), whether or not the
23 nominated personal representative ~~he or she~~ is interested in
24 the estate, or upon the oath of any person having no interest
25 in the estate under the will stating that the person ~~he or~~
26 ~~she~~ believes the writing exhibited to be the true last will of
27 the decedent.

28 Section 86. Section 733.202, Florida Statutes, is
29 amended to read:

30 733.202 Petition.--Any interested person may petition
31 for administration.

- 1 ~~(1) A verified petition for administration may be~~
2 ~~filed by any interested person.~~
- 3 ~~(2) The petition for administration shall contain:~~
- 4 ~~(a) A statement of the interest of the petitioner, the~~
5 ~~petitioner's name and address, and the name and office address~~
6 ~~of his or her attorney.~~
- 7 ~~(b) The name, last known address, social security~~
8 ~~number, and date and place of death of the decedent and the~~
9 ~~state and county of the decedent's domicile.~~
- 10 ~~(c) So far as is known, the names and addresses of the~~
11 ~~beneficiaries and the dates of birth of any who are minors.~~
- 12 ~~(d) A statement showing venue.~~
- 13 ~~(e) The priority under part III of the person whose~~
14 ~~appointment as the personal representative is sought.~~
- 15 ~~(f) A statement of the approximate value and nature of~~
16 ~~the assets so the clerk can ascertain the amount of the filing~~
17 ~~fee and the court can determine the amount of any bond~~
18 ~~authorized by this code.~~
- 19 ~~(3) If the decedent was a nonresident of this state,~~
20 ~~the petition shall state whether domiciliary proceedings are~~
21 ~~pending in another state or country, if known, and, if so, the~~
22 ~~name and address of the foreign personal representative and~~
23 ~~the court issuing letters.~~
- 24 ~~(4) In an intestate estate, the petition shall:~~
- 25 ~~(a) State that after the exercise of reasonable~~
26 ~~diligence the petitioner is unaware of any unrevoked wills or~~
27 ~~codicils or, if the petitioner is aware of any unrevoked wills~~
28 ~~or codicils, why the wills or codicils are not being probated,~~
29 ~~or~~
- 30 ~~(b) Otherwise give the facts concerning the will or~~
31 ~~codicil.~~

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

2 ~~(a) Identify all unrevoked wills and codicils being~~
3 ~~presented for probate.~~

4 ~~(b) State that the petitioner is unaware of any other~~
5 ~~unrevoked will or codicil or, if the petitioner is aware of~~
6 ~~any other unrevoked will or codicil, why the other will or~~
7 ~~codicil is not being probated.~~

8 ~~(c) State that the original of the decedent's last~~
9 ~~will is in the possession of the court or accompanies the~~
10 ~~petition or that an authenticated copy of a will probated in~~
11 ~~another jurisdiction accompanies the petition.~~

12 Section 87. Section 733.203, Florida Statutes, is
13 repealed:

14 ~~733.203 Notice; when required.--~~

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

18 ~~(2) Except as may otherwise be provided in this part,~~
19 ~~no notice need be given of the petition for administration or~~
20 ~~of the order granting letters when it appears that the~~
21 ~~petitioner is entitled to preference of appointment. Before~~
22 ~~letters shall be granted to any person who is not entitled to~~
23 ~~preference, formal notice shall be served on all known persons~~
24 ~~qualified to act as personal representative and entitled to~~
25 ~~preference equal to or greater than the applicant, unless~~
26 ~~those entitled to preference waive it in writing.~~

27 Section 88. Subsection (2) of section 733.204, Florida
28 Statutes, is amended to read:

29 733.204 Probate of a will written in a foreign
30 language.--

31

1 (2) ~~In admitting the will to probate, the court shall~~
2 ~~establish its correct English translation. If the original~~
3 ~~will is not or cannot be filed, a photographic copy of the~~
4 ~~original will shall be filed. At any time during the~~
5 ~~administration any interested person may have the correctness~~
6 ~~of the translation, or any part, redetermined after formal~~
7 ~~notice to all other interested persons.~~ No personal
8 representative who complies in good faith with the English
9 translation of the will as ~~may then be~~ established by the
10 court shall ~~thereafter be held liable for doing as a result of~~
11 ~~having done so.~~

12 Section 89. Section 733.205, Florida Statutes, is
13 amended to read:

14 733.205 Probate of notarial will.--

15 (1) When a copy of a notarial will in the possession
16 of a notary entitled to its custody in a foreign state or
17 country, the laws of which state or country require that the
18 will remain in the custody of the ~~such~~ notary, duly
19 authenticated by the notary, whose official position,
20 signature, and seal of office are further authenticated by an
21 American consul, vice consul, or other American consular
22 officer within whose jurisdiction the notary is a resident, is
23 presented to the court, it may be admitted to probate if the
24 original could have been admitted to probate in this state.

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

28 (3) Any interested person ~~notified~~ may oppose the
29 probate of such a notarial will or may petition for revocation
30 of probate of such a notarial will, as in the ~~case of~~ original
31 probate of a will in this state.

1 Section 90. Subsection (3) of section 733.206, Florida
2 Statutes, is amended to read:

3 733.206 Probate of will of resident after foreign
4 probate.--

5 (3) Any interested person may oppose the probate of
6 the will, or may petition for revocation of the probate of the
7 will, as in ~~the case of~~ the original probate of a will in this
8 state.

9 Section 91. Section 733.207, Florida Statutes, is
10 amended to read:

11 733.207 Establishment and probate of lost or destroyed
12 will.--Any interested person may establish the full and
13 precise terms of a lost or destroyed will and offer the will
14 for probate.

15 ~~(1) The establishment and probate of a lost or~~
16 ~~destroyed will shall be in one proceeding. The court shall~~
17 ~~recite, and thereby establish and preserve, the full and~~
18 ~~precise terms and provisions of the will in the order~~
19 ~~admitting it to probate.~~

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

25 ~~(3) No lost or destroyed will shall be admitted to~~
26 ~~probate unless formal notice has been given to those who, but~~
27 ~~for the will, would be entitled to the property thereby~~
28 ~~devised. The specific content of the will must be clearly and~~
29 ~~distinctly proved by the testimony of two disinterested~~
30 ~~witnesses, or, if a correct copy is provided, it shall be~~
31 ~~proved by one disinterested witness.~~

1 Section 92. Section 733.208, Florida Statutes, is
2 amended to read:

3 733.208 Discovery of later will.--On the discovery of
4 a later will or codicil ~~expressly or impliedly revoking the~~
5 ~~probated will in whole or in part, pending or during~~
6 administration, any interested person may petition to revoke
7 the probate of the earlier will or to probate the later will
8 or codicil offer the later will for probate. The proceedings
9 ~~shall be similar to those for revocation of probate.~~ No later
10 will or codicil may be offered after the testate or intestate
11 estate has been completely administered and the personal
12 representative discharged closing of the estate.

13 Section 93. Section 733.209, Florida Statutes, is
14 amended to read:

15 733.209 Estates of missing persons.--Any interested
16 person may petition to administer the estate of a missing
17 person; however, no personal representative shall be appointed
18 until the court determines the missing person is dead.~~The~~
19 ~~estates of missing persons shall be administered in the same~~
20 ~~manner as other estates. A petition for administration of the~~
21 ~~estate shall request entry of an order declaring the death of~~
22 ~~a missing person prior to appointing a personal representative~~
23 ~~and commencing administration.~~

24 Section 94. Section 733.212, Florida Statutes, is
25 amended to read:

26 733.212 Notice of administration; filing of objections
27 and claims.--

28 (1) ~~The personal representative shall promptly publish~~
29 ~~a notice of administration. The notice shall contain the name~~
30 ~~of the decedent, the file number of the estate, the~~
31 ~~designation and address of the court in which the proceedings~~

1 ~~are pending, the name and address of the personal~~
2 ~~representative, and the name and address of the personal~~
3 ~~representative's attorney and state the date of first~~
4 ~~publication. The notice shall require all interested persons~~
5 ~~to file with the court:~~

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

8 ~~(b) Any objection by an interested person on whom~~
9 ~~notice was served that challenges the validity of the will,~~
10 ~~the qualifications of the personal representative, venue, or~~
11 ~~jurisdiction of the court within the later of 3 months after~~
12 ~~the date of the first publication of the notice or 30 days~~
13 ~~after the date of service of a copy of the notice on the~~
14 ~~objecting person.~~

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

20 ~~(1)(3)~~ The personal representative shall promptly
21 serve a copy of the notice of administration on the following
22 persons who are known to the personal representative:

23 (a) The decedent's surviving spouse;

24 (b) Beneficiaries; ~~and~~

25 (c) The trustee of any trust described in s.

26 733.707(3); and, of which the decedent was grantor

27 (d) Persons who may be entitled to exempt property
28

29 in the manner provided for service of formal notice, unless
30 served under s. 733.2123. The personal representative may
31 similarly serve a copy of the notice on any devisees under a

1 known prior will or heirs or others who claim or may claim an
2 interest in the estate.

3 (2) The notice shall state the name of the decedent,
4 the file number of the estate, the designation and address of
5 the court in which the proceedings are pending, whether the
6 estate is testate or intestate, and, if testate, the date of
7 the will and any codicils, the name and address of the
8 personal representative, and the name and address of the
9 personal representative's attorney. The notice shall state
10 that interested persons are required to file with the court
11 any objection by an interested person on whom the notice was
12 served that challenges the validity of the will, the
13 qualifications of the personal representative, venue, or
14 jurisdiction of the court within 3 months after the date of
15 service of a copy of the notice of administration on the
16 objecting person.

17 (3) Any interested person on whom a copy of the notice
18 of administration was served must object to the validity of
19 the will, the qualifications of the personal representative,
20 venue, or jurisdiction of the court by filing a petition or
21 other pleading requesting relief in accordance with the
22 Florida Probate Rules within 3 months after the date of
23 service of a copy of the notice of administration on the
24 objecting person or those objections are forever barred. The
25 appointment of a personal representative or a successor
26 personal representative shall not extend or renew the period
27 for filing objections under this section, unless a new will or
28 codicil is admitted.

29 ~~(4)(a) The personal representative shall promptly make~~
30 ~~a diligent search to determine the names and addresses of~~
31 ~~creditors of the decedent who are reasonably ascertainable and~~

1 ~~shall serve on those creditors a copy of the notice within 3~~
2 ~~months after the first publication of the notice. Under s.~~
3 ~~409.9101, the Agency for Health Care Administration is~~
4 ~~considered a reasonably ascertainable creditor in instances~~
5 ~~where the decedent had received Medicaid assistance for~~
6 ~~medical care after reaching 55 years of age. Impracticable and~~
7 ~~extended searches are not required. Service is not required~~
8 ~~on any creditor who has filed a claim as provided in this~~
9 ~~part; a creditor whose claim has been paid in full; or a~~
10 ~~creditor whose claim is listed in a personal representative's~~
11 ~~timely proof of claim if the personal representative notified~~
12 ~~the creditor of that listing.~~

13 (4)(b) The personal representative is not individually
14 liable to any person for giving notice under this section
15 subsection, regardless of whether it is later determined that
16 ~~such~~ notice was not required by this section. The service of
17 notice in accordance with this section subsection shall not be
18 construed as conferring any right ~~admitting the validity or~~
19 ~~enforceability of a claim.~~

20 (5)(c) If the personal representative in good faith
21 fails to give notice required by this section subsection, the
22 personal representative is not liable to any person for the
23 failure. Liability, if any, for the failure ~~in such a case~~ is
24 on the estate.

25 ~~(5) Objections under paragraph (1)(b), by persons on~~
26 ~~whom notice was served, that are not filed within the later of~~
27 ~~3 months after the date of first publication of the notice or~~
28 ~~30 days after the date of service of a copy of the notice on~~
29 ~~the objecting person are forever barred.~~

30 (6) If a will or codicil is subsequently admitted to
31 probate, the personal representative shall promptly serve a

1 copy of a new notice of administration as required for an
2 initial will admission.~~Claims under paragraph (1)(a) are~~
3 ~~barred as provided in s. 733.702.~~

4 Section 95. Section 733.2121, Florida Statutes, is
5 created to read:

6 733.2121 Notice to creditors; filing of claims.--

7 (1) Unless creditors' claims are otherwise barred by
8 s. 733.710, the personal representative shall promptly publish
9 a notice to creditors. The notice shall contain the name of
10 the decedent, the file number of the estate, the designation
11 and address of the court in which the proceedings are pending,
12 the name and address of the personal representative, the name
13 and address of the personal representative's attorney, and the
14 date of first publication. The notice shall state that
15 creditors must file claims against the estate with the court
16 within the time periods set forth in ss. 733.702 and 733.710,
17 or be forever barred.

18 (2) Publication shall be once a week for 2 consecutive
19 weeks, in a newspaper published in the county where the estate
20 is administered or, if there is no newspaper published in the
21 county, in a newspaper of general circulation in that county.

22 (3)(a) The personal representative shall promptly make
23 a diligent search to determine the names and addresses of
24 creditors of the decedent who are reasonably ascertainable,
25 even if the claims are unmaturing, contingent, or unliquidated,
26 and shall promptly serve a copy of the notice on those
27 creditors. Impracticable and extended searches are not
28 required. Service is not required on any creditor who has
29 filed a claim as provided in this part, whose claim has been
30 paid in full, or whose claim is listed in a personal
31 representative's timely filed proof of claim.

1 (b) The personal representative is not individually
2 liable to any person for giving notice under this section,
3 even if it is later determined that notice was not required.
4 The service of notice to creditors in accordance with this
5 section shall not be construed as admitting the validity or
6 enforceability of a claim.

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

11 (d) If a decedent at the time of death was 55 years of
12 age or older, the personal representative shall promptly serve
13 a copy of the notice to creditors on the Agency for Health
14 Care Administration within 3 months after the first
15 publication of the notice to creditors, unless the agency has
16 already filed a statement of claim in the estate proceedings.

17 (e) If the Department of Revenue has not previously
18 been served with a copy of the notice to creditors, then
19 service of the inventory on the Department of Revenue shall be
20 the equivalent of service of a copy of the notice to
21 creditors.

22 (4) Claims are barred as provided in ss. 733.702 and
23 733.710.

24 Section 96. Section 733.2123, Florida Statutes, is
25 amended to read:

26 733.2123 Adjudication before issuance of letters.--A
27 petitioner may serve formal notice of the ~~his or her~~ petition
28 for administration on interested persons. A copy of the will
29 offered for ~~proposed to be admitted to~~ probate shall be
30 attached to the notice. No person who is served with formal
31 notice of the petition for administration prior to the

1 issuance of letters or who has waived notice may challenge the
2 validity of the will, testacy of the decedent, qualifications
3 of the personal representative, venue, or jurisdiction of the
4 court, except in ~~connection with~~ the proceedings before
5 issuance of letters.

6 Section 97. Section 733.213, Florida Statutes, is
7 amended to read:

8 733.213 Probate as prerequisite to judicial petition
9 ~~for~~ construction of will.--A will may not be construed until
10 it has been admitted to probate ~~No pleading seeking~~
11 ~~construction of a will may be maintained until the will has~~
12 ~~first been probated.~~

13 Section 98. Section 733.301, Florida Statutes, is
14 amended to read:

15 733.301 Preference in appointment of personal
16 representative.--

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

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

20 1.~~(a)~~ The personal representative, or his or her
21 successor, nominated by the will or pursuant to a power
22 conferred in the will.

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

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

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

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

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

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

4 (2)~~(3)~~ A guardian of the property of a ward who if
5 competent would be entitled to appointment as, or to select,
6 the ~~a~~ personal representative may exercise the right to select
7 the personal representative.

8 (3)~~(4)~~ In either a testate or an intestate estate, if
9 no application is made by any of the persons described ~~named~~
10 in subsection (1) ~~or subsection (2)~~, the court shall appoint a
11 capable person; but no person may be appointed under this
12 subsection:

13 (a) Who works for, or holds public office under, the
14 court.

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

17 (4)~~(5)~~ After letters have been granted in either a
18 testate or an intestate estate, if a person who was entitled
19 to, and has not waived, preference over the person appointed
20 at the time of the ~~his or her~~ appointment and on whom formal
21 notice was not served seeks the appointment, the letters
22 granted may be revoked and the person entitled to preference
23 may have letters granted ~~to him or her~~ after formal notice and
24 hearing.

25 (5)~~(6)~~ After letters have been granted in either a
26 testate or an intestate estate, if any will is subsequently
27 admitted to probate the letters shall be revoked and new
28 letters granted ~~as provided in subsection (1)~~.

29 Section 99. Section 733.302, Florida Statutes, is
30 amended to read:

31

1 733.302 Who may be appointed personal
2 representative.--Subject to the limitations in this part, any
3 person who is sui juris and ~~who~~ is a resident of Florida at
4 the time of the death of the person whose estate is to be
5 administered ~~he or she seeks to administer~~ is qualified to act
6 as personal representative in Florida. ~~A person who has been~~
7 ~~convicted of a felony or who, from sickness, intemperance, or~~
8 ~~want of understanding, is incompetent to discharge the duties~~
9 ~~of a personal representative is not qualified.~~

10 Section 100. Subsections (1) and (2) of section
11 733.305, Florida Statutes, are amended to read:

12 733.305 Trust companies and other corporations and
13 associations.--

14 (1) All trust companies incorporated under the laws of
15 Florida ~~the state~~, all state banking corporations and state
16 savings associations authorized and qualified to exercise
17 fiduciary powers in Florida, and all national banking
18 associations and federal savings and loan associations
19 authorized and qualified to exercise fiduciary powers in
20 Florida shall be entitled to act as personal representatives
21 and curators of estates.

22 (2) When a qualified corporation has been named as a
23 personal representative in a will and subsequently ~~thereafter~~
24 transfers its business and assets to, consolidates or merges
25 with, or is in any manner provided by law succeeded by,
26 another qualified corporation, on the death of the testator,
27 the successor corporation may qualify as personal
28 representative, ~~and the court may issue letters to the~~
29 ~~successor corporation~~ unless the will provides otherwise.

30 Section 101. Section 733.306, Florida Statutes, is
31 amended to read:

1 733.306 Effect of appointment of debtor.--The
2 appointment of a debtor as personal representative shall not
3 extinguish the debt due to the decedent. ~~This section shall~~
4 ~~not prevent a testator from releasing a debtor by will.~~

5 Section 102. Section 733.307, Florida Statutes, is
6 amended to read:

7 733.307 Succession of administration.--~~The~~ ~~No~~ personal
8 representative of the estate of a deceased personal
9 representative is not ~~as such shall be~~ authorized to
10 administer the estate of the first decedent. On the death of
11 a ~~the~~ sole or surviving personal representative, the court
12 shall appoint a successor personal representative to complete
13 the administration of the estate.

14 Section 103. Section 733.308, Florida Statutes, is
15 amended to read:

16 733.308 Administrator ad litem.--~~When it is necessary~~
17 ~~that~~ an estate must be represented and ~~the~~ ~~there is no~~
18 personal representative is unable to do so ~~of the estate~~, the
19 court shall appoint an administrator ad litem without bond to
20 represent the estate in that ~~for that particular~~ proceeding.
21 The fact that the personal representative is seeking
22 reimbursement for claims against the decedent ~~paid by the~~
23 ~~personal representative~~ does not require appointment of an
24 administrator ad litem.

25 Section 104. Section 733.309, Florida Statutes, is
26 amended to read:

27 733.309 Executor de son tort.--No person shall be
28 liable to a creditor of a decedent as executor de son tort,
29 but any person taking, converting, or intermeddling with the
30 property of a decedent shall be liable to the personal
31 representative or curator, when appointed, for the value of

1 all the property so taken or converted and for all damages to
2 the estate caused by the ~~his or her~~ wrongful action. This
3 section shall not be construed to prevent a creditor of a
4 decedent from suing anyone in possession of property
5 fraudulently conveyed by the decedent to set aside the
6 fraudulent conveyance.

7 Section 105. Section 733.310, Florida Statutes, is
8 created to read:

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

19 Section 106. Section 733.401, Florida Statutes, is
20 repealed:

21 ~~733.401 Issuance of letters.--~~

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

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

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

27 ~~(c) The court shall determine the amount of any bond~~
28 ~~required under this part. The clerk may approve the bond in~~
29 ~~the amount determined by the court and shall not charge a~~
30 ~~service fee.~~

31

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

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

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

7 Section 107. Section 733.402, Florida Statutes, is
8 amended to read:

9 733.402 Bond of fiduciary ~~personal representative;~~
10 when required; form.--

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

20 (2) No bond ~~executed by a personal representative or~~
21 ~~curator~~ shall be void or invalid because of an informality in
22 it or an informality or illegality in the appointment of the
23 fiduciary. The bond shall have the same force as if the
24 appointment had been legally made and the bond executed in
25 proper form.

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

29 (4) On petition by any interested person or on the
30 court's own motion, the court may waive the requirement of
31

1 filing a bond, require a bond, increase or decrease the bond,
2 or require additional surety.

3 Section 108. Section 733.403, Florida Statutes, is
4 amended to read:

5 733.403 Amount of bond.--

6 ~~(1)~~ All bonds required by this part shall be in the
7 penal sum that the court deems sufficient after consideration
8 of the gross value of the estate, the relationship of the
9 personal representative to the beneficiaries, exempt property
10 and any family allowance, the type and nature of assets, known
11 creditors, and liens and encumbrances on the assets.

12 ~~(2) On petition by any interested person or on the~~
13 ~~court's own motion, the court may waive the requirement of~~
14 ~~filing a bond, require a personal representative or curator to~~
15 ~~give bond, increase or decrease the bond, or require~~
16 ~~additional surety.~~

17 Section 109. Section 733.404, Florida Statutes, is
18 amended to read:

19 733.404 Liability of surety.--No surety for any
20 personal representative or curator shall be charged beyond the
21 value of the assets of an estate because of any omission or
22 mistake in pleading or of false pleading of the personal
23 representative or curator.

24 Section 110. Section 733.405, Florida Statutes, is
25 amended to read:

26 733.405 Release of surety.--

27 (1) Subject to the limitations of this section, on the
28 petition of any interested person, the surety is entitled to
29 be released from liability for the future acts and omissions
30 of the fiduciary ~~On petitioning the surety, or the personal~~
31 ~~representative of a surety, on the bond of any personal~~

1 ~~representative or curator shall be entitled as a matter of~~
2 ~~right to be released from future liability upon the bond.~~

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

6 (3) On hearing, the court shall enter an order
7 prescribing the amount of the new bond for the fiduciary
8 ~~personal representative or curator~~ and the date when the bond
9 shall be filed. If the fiduciary principal fails to give the
10 new bond, the fiduciary he or she shall be removed at once,
11 and further proceedings shall be had as in cases of removal.

12 (4) The original surety ~~or sureties~~ shall remain be
13 liable in accordance with the terms of its original bond for
14 all acts and omissions of the fiduciary that occur prior to
15 ~~personal representative or surety~~ until he or she has given
16 the approval of the new surety and filing and approval of the
17 ~~bond and, after the giving of the new bond, shall remain~~
18 ~~liable for all the principal's acts to the time of the filing~~
19 ~~and approval of the new bond.~~ The new surety shall be liable
20 on its bond for the principal's acts only after the filing and
21 approval of the new bond.

22 Section 111. Section 733.406, Florida Statutes, is
23 amended to read:

24 733.406 Bond premium allowable as expense of
25 administration or costs.--A personal representative Any
26 ~~receiver, assignee, trustee, committee, guardian, executor or~~
27 ~~administrator, or other fiduciary required by law to give bond~~
28 shall pay the reasonable premium as an expense of
29 administration as such, may include as part of his or her
30 ~~lawful expense such reasonable sum paid such an insurer for~~
31 ~~such suretyship not exceeding 1 percent per annum on the~~

1 ~~amount of the bond, as the head of department, board, court,~~
2 ~~judge or officer by whom, or the court or body in which, he or~~
3 ~~she was appointed allows; and in all actions or proceedings~~
4 ~~the party entitled to recover costs may include therein such~~
5 ~~reasonable sum as may have been paid such an insurer executing~~
6 ~~or guaranteeing any bond or undertaking therein.~~

7 Section 112. Section 733.501, Florida Statutes, is
8 amended to read:

9 733.501 Curators.--

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

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

31

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

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

7 ~~(5) The curator shall file an inventory of the~~
8 ~~property within 20 days. When the personal representative~~
9 ~~qualifies, the curator shall immediately account and deliver~~
10 ~~all assets of the estate in his or her hands to the personal~~
11 ~~representative within 20 days, and in default shall be subject~~
12 ~~to the provisions of this code relating to removal of personal~~
13 ~~representatives.~~

14 (3)(6) Curators shall be allowed reasonable
15 compensation for their services and the court may consider the
16 provisions of s. 733.617.

17 (4) Curators shall be subject to removal and
18 surcharge.

19 Section 113. Section 733.502, Florida Statutes, is
20 amended to read:

21 733.502 Resignation of personal representative.--A
22 personal representative may resign ~~and be relieved of his or~~
23 ~~her office. Notice of the petition shall be given to all~~
24 ~~interested persons. Before relieving the personal~~
25 ~~representative from his or her duties and obligations, the~~
26 ~~court shall require the personal representative to file a true~~
27 ~~and correct account of his or her administration and deliver~~
28 ~~to his or her successor or to his or her joint personal~~
29 ~~representative all of the property of the decedent and all~~
30 records concerning the estate. After notice to all interested
31 persons, the court may accept the resignation and then revoke

1 the letters of the resigning personal representative if the
2 interests of the estate are not jeopardized by the
3 resignation. ~~The acceptance of the resignation, after~~
4 ~~compliance with this section,~~ shall not exonerate the any
5 personal representative or the ~~his or her~~ surety from
6 liability ~~previously incurred.~~

7 Section 114. Section 733.503, Florida Statutes, is
8 amended to read:

9 733.503 Appointment of successor upon
10 resignation.--When the personal representative's resignation
11 is accepted, the court shall appoint a personal representative
12 or shall appoint a curator to serve until a successor personal
13 representative is appointed ~~if there is no joint personal~~
14 ~~representative, a successor must be appointed and qualified~~
15 ~~before a personal representative may be relieved of his or her~~
16 ~~duties and obligations as provided in s. 733.502.~~

17 Section 115. Section 733.5035, Florida Statutes, is
18 created to read:

19 733.5035 Surrender of assets after resignation.--When
20 the resignation has been accepted by the court, all estate
21 assets, records, documents, papers, and other property of or
22 concerning the estate in the resigning personal
23 representative's possession or control shall immediately be
24 surrendered to the successor fiduciary. The court may
25 establish the conditions and specify the assets and records,
26 if any, that the resigning personal representative may retain
27 until the final accounting of the resigning personal
28 representative has been approved.

29 Section 116. Section 733.5036, Florida Statutes, is
30 created to read:

31

1 733.5036 Accounting and discharge following
2 resignation.--

3 (1) A resigning personal representative shall file and
4 serve a final accounting of the personal representative's
5 administration.

6 (2) After determination and satisfaction of the
7 liability, if any, of the resigning personal representative,
8 after compensation of the personal representative and the
9 attorney and other persons employed by the personal
10 representative, and upon receipt of evidence that
11 undistributed estate assets have been delivered to the
12 successor fiduciary, the personal representative shall be
13 discharged, the bond released, and the surety discharged.

14 Section 117. Section 733.504, Florida Statutes, is
15 amended to read:

16 733.504 ~~Causes of~~ Removal of personal representative;
17 causes for removal.--A personal representative may be removed
18 and the ~~his or her~~ letters revoked for any of the following
19 causes, and the removal shall be in addition to any penalties
20 prescribed by law:

21 (1) Adjudication of incompetency.

22 (2) Physical or mental incapacity rendering the
23 personal representative incapable of the discharge of his or
24 her duties.

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

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

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

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

31 (7) Conviction of a felony.

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

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

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

13 (11) Removal of domicile from Florida, if domicile was
14 a requirement of initial appointment ~~the personal~~
15 ~~representative is no longer qualified under part III of this~~
16 ~~chapter.~~

17 (12) The personal representative would not now be
18 entitled to appointment.

19 Section 118. Section 733.505, Florida Statutes, is
20 amended to read:

21 733.505 Jurisdiction in removal proceedings.--A
22 petition for removal shall be filed in the court having
23 jurisdiction of the administration ~~issuing the letters.~~

24 Section 119. Section 733.506, Florida Statutes, is
25 amended to read:

26 733.506 Proceedings for removal.--Proceedings for
27 removal of a personal representative may be commenced by the
28 court or upon the petition of an ~~by any~~ interested person ~~or~~
29 ~~joint personal representative.~~ The court shall revoke the
30 letters of a removed personal representative. The removal of a
31 personal representative shall not exonerate the removed

1 personal representative or the removed personal
2 representative's surety from any liability.

3 Section 120. Section 733.5061, Florida Statutes, is
4 created to read:

5 733.5061 Appointment of successor upon removal.--When
6 a personal representative is removed, the court shall appoint
7 a personal representative or shall appoint a curator to serve
8 until a successor personal representative is appointed.

9 Section 121. Section 733.507, Florida Statutes, is
10 repealed:

11 ~~733.507 Administration following resignation or~~
12 ~~removal.--When a personal representative has resigned or is~~
13 ~~removed and there is a remaining personal representative, no~~
14 ~~other personal representative shall be appointed unless the~~
15 ~~will otherwise requires. The remaining personal~~
16 ~~representative, together with any successor personal~~
17 ~~representative, if appointed, shall complete the~~
18 ~~administration of the estate. If the resigned or removed~~
19 ~~personal representative is a sole personal representative, the~~
20 ~~court shall appoint a successor personal representative as~~
21 ~~provided in s. 733.301.~~

22 Section 122. Section 733.508, Florida Statutes, is
23 amended to read:

24 733.508 Accounting and discharge of removed personal
25 representatives upon removal.--

26 (1) A removed personal representative shall file and
27 serve a final accounting of that personal representative's
28 administration.

29 (2) After determination and satisfaction of the
30 liability, if any, of the removed personal representative,
31 after compensation of that personal representative and the

1 attorney and other persons employed by that personal
2 representative, and upon receipt of evidence that the estate
3 assets have been delivered to the successor fiduciary, the
4 removed personal representative shall be discharged, the bond
5 released, and the surety discharged. ~~A removed personal~~
6 ~~representative shall file a full, true, and correct account of~~
7 ~~his or her administration within 30 days after removal.~~

8 Section 123. Section 733.509, Florida Statutes, is
9 amended to read:

10 733.509 Surrender of assets upon removal.--Upon entry
11 of an order removing a personal representative, the removed
12 personal representative shall immediately deliver all estate
13 assets, records, documents, papers, and other property of or
14 concerning the estate in the removed personal representative's
15 possession or control to the remaining personal representative
16 or successor fiduciary ~~The removed personal representative~~
17 ~~shall deliver to the remaining or successor personal~~
18 ~~representative all of the property of the decedent and all~~
19 ~~records, documents, papers, and other property of or~~
20 ~~concerning the estate.~~

21 Section 124. Section 733.601, Florida Statutes, is
22 amended to read:

23 733.601 Time of accrual of duties and powers.--The
24 duties and powers of a personal representative commence upon
25 ~~his or her~~ appointment. The powers of a personal
26 representative relate back in time to give acts by the person
27 appointed, occurring before appointment and beneficial to the
28 estate, the same effect as those occurring after appointment
29 ~~thereafter. Before issuance of letters, a person named~~
30 ~~executor in a will may carry out written instructions of the~~
31 ~~decedent relating to the decedent's body and funeral and~~

1 ~~burial arrangements.~~A personal representative may ratify and
2 accept acts on behalf of the estate done by others when the
3 acts would have been proper for a personal representative.

4 Section 125. Section 733.602, Florida Statutes, is
5 amended to read:

6 733.602 General duties.--

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

19 (2) A personal representative shall not be liable for
20 any act of administration or distribution if the act was
21 authorized at the time. Subject to other obligations of
22 administration, a probated will is authority to administer and
23 distribute the estate according to its terms. An order of
24 appointment of a personal representative is authority to
25 distribute apparently intestate assets to the heirs of the
26 decedent if, at the time of distribution, the personal
27 representative is not aware of a proceeding challenging
28 intestacy or a proceeding questioning the ~~his or her~~
29 appointment or fitness to continue. Nothing in this section
30 affects the duty of the personal representative to administer
31

1 and distribute the estate in accordance with the rights of
2 interested persons.

3 Section 126. Section 733.603, Florida Statutes, is
4 amended to read:

5 733.603 Personal representative to proceed without
6 court order.--A personal representative shall proceed
7 expeditiously with the settlement and distribution of a
8 decedent's estate and, except as otherwise specified by this
9 code or ordered by the court, shall do so without
10 adjudication, order, or direction of the court. A personal
11 representative may invoke the jurisdiction of the court to
12 resolve ~~judicial~~ questions concerning the estate or its
13 administration.

14 Section 127. Section 733.604, Florida Statutes, is
15 amended to read:

16 733.604 Inventory.--

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

30 ~~(b) The initial opening of any safe deposit box of the~~
31 ~~decedent must be conducted in the presence of an employee of~~

1 ~~the institution where the box is located and the personal~~
2 ~~representative. The inventory of the contents of the box also~~
3 ~~must be conducted in the presence of the employee and the~~
4 ~~personal representative, each of whom must verify the contents~~
5 ~~of the box by signing a copy of the inventory. The personal~~
6 ~~representative shall file the safe-deposit box inventory with~~
7 ~~the court within 10 days after the box is opened.~~

8 ~~(2) The personal representative shall serve a copy of~~
9 ~~the inventory on the Department of Revenue, as provided in s.~~
10 ~~199.062(4), the surviving spouse, each heir at law in an~~
11 ~~intestate estate, each residuary beneficiary in a testate~~
12 ~~estate, and any other interested person who may request it;~~
13 ~~and the personal representative shall file proof of such~~
14 ~~service. The inventory shall be verified by the personal~~
15 ~~representative.~~

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

30 ~~(3)(4)~~ Upon written request to the personal
31 representative, a beneficiary shall be furnished a written

1 explanation of how the inventory value for an asset was
2 determined, or, if an appraisal was obtained, a copy of the
3 appraisal, as follows:

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

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

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

26 Section 128. Section 733.605, Florida Statutes, is
27 repealed:

28 ~~733.605 Appraisers.--The personal representative may~~
29 ~~employ a qualified and disinterested appraiser to assist him~~
30 ~~or her in ascertaining the fair market value of any asset at~~
31 ~~the date of the decedent's death or any other date that may be~~

1 ~~appropriate, the value of which may be subject to reasonable~~
2 ~~doubt. Different persons may be employed to appraise different~~
3 ~~kinds of assets included in the estate.~~

4 Section 129. Section 733.6065, Florida Statutes, is
5 created to read:

6 733.6065 Opening safe-deposit box.--

7 (1) Subject to the provisions of s. 655.936(2), the
8 initial opening of the decedent's safe-deposit box shall be
9 conducted in the presence of any two of the following persons:
10 an employee of the institution where the box is located, the
11 personal representative, or the personal representative's
12 attorney of record. Each person who is present must verify
13 the contents of the box by signing a copy of the inventory
14 under penalties of perjury. The personal representative shall
15 file the safe-deposit box inventory, together with a copy of
16 the box entry record from a date which is 6 months prior to
17 the date of death to the date of inventory, with the court
18 within 10 days after the box is opened. Unless otherwise
19 ordered by the court, this inventory and the attached box
20 entry record is subject to inspection only by persons entitled
21 to inspect an inventory under s. 733.604(1). The personal
22 representative may remove the contents of the box.

23 (2) The right to open and examine the contents of a
24 safe-deposit box leased by a decedent, or any documents
25 delivered by a decedent for safekeeping, and to receive items
26 as provided for in s. 655.935 are in addition to the rights
27 provided for in subsection (1).

28 Section 130. Section 733.607, Florida Statutes, is
29 amended to read:

30 733.607 Possession of estate.--

31

1 (1) Except as otherwise provided by a decedent's will,
2 every personal representative has a right to, and shall take
3 possession or control of, the decedent's property, except the
4 protected homestead, but any real property or tangible
5 personal property may be left with, or surrendered to, the
6 person presumptively entitled to it unless possession of the
7 property by the personal representative will be necessary for
8 purposes of administration. The request by a personal
9 representative for delivery of any property possessed by a
10 beneficiary is conclusive evidence that the possession of the
11 property by the personal representative is necessary for the
12 purposes of administration, in any action against the
13 beneficiary for possession of it. The personal representative
14 shall take all steps reasonably necessary for the management,
15 protection, and preservation of the estate until distribution
16 and. ~~He or she~~ may maintain an action to recover possession of
17 property or to determine the title to it.

18 (2) If, after providing for statutory entitlements and
19 all devises other than residuary devises, the assets of the
20 decedent's estate are insufficient to pay the expenses of the
21 administration and obligations of the decedent's estate ~~and~~
22 ~~enforceable claims of the decedent's creditors~~, the personal
23 representative is entitled to payment from the trustee of a
24 trust described in s. 733.707(3), in the amount the personal
25 representative certifies in writing to be required to satisfy
26 the such insufficiency.

27 Section 131. Section 733.608, Florida Statutes, is
28 amended to read:

29 733.608 General power of the personal
30 representative.--

31

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

5 ~~(a)(1)~~ For the payment of devises, ~~debts~~, family
6 allowance, elective share, estate and inheritance taxes,
7 claims, charges, and expenses of the administration and
8 obligations of the decedent's estate.

9 ~~(b)(2)~~ To enforce contribution and equalize
10 advancement.

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

12 (2) If property that reasonably appears to the
13 personal representative to be protected homestead is not in
14 the possession of a person who appears to have an interest in
15 the property, the personal representative is authorized, but
16 not required, to take possession of that property for the
17 limited purpose of preserving, insuring, and protecting it for
18 the heir or devisee, pending a determination of its homestead
19 status. If the personal representative takes possession of
20 that property, any rents and revenues may be collected by the
21 personal representative for the account of the heir or
22 devisee, but the personal representative shall have no duty to
23 rent or otherwise make the property productive.

24 Section 132. Section 733.609, Florida Statutes, is
25 amended to read:

26 733.609 Improper exercise of power; breach of
27 fiduciary duty.--A personal representative's fiduciary duty is
28 the same as the fiduciary duty of a trustee of an express
29 trust and a personal representative is liable to interested
30 persons for damage or loss resulting from the breach of this
31 duty. In all actions for breach of fiduciary duty or

1 challenging the exercise of or failure to exercise a personal
2 representative's powers, the court shall award taxable costs
3 as in chancery actions, including attorney's fees ~~if the~~
4 ~~exercise of power concerning the estate is improper or in bad~~
5 ~~faith, the personal representative is liable to interested~~
6 ~~persons for damage or loss resulting from a breach of his or~~
7 ~~her fiduciary duty to the same extent as a trustee of an~~
8 ~~express trust. In all actions challenging the proper exercise~~
9 ~~of a personal representative's powers, the court shall award~~
10 ~~taxable costs as in chancery actions, including attorney's~~
11 ~~fees.~~

12 Section 133. Section 733.610, Florida Statutes, is
13 amended to read:

14 733.610 Sale, encumbrance or transaction involving
15 conflict of interest.--Any sale or encumbrance to the personal
16 representative or the personal representative's ~~his or her~~
17 spouse, agent, or attorney, or any corporation or trust in
18 which the personal representative has a substantial beneficial
19 interest, or any transaction that is affected by a conflict of
20 interest on the part of the personal representative, is
21 voidable by any interested person except one who has consented
22 after fair disclosure, unless:

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

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

27 Section 134. Section 733.611, Florida Statutes, is
28 amended to read:

29 733.611 Persons dealing with the personal
30 representative; protection.--Except as provided in s.

31 733.613(1), a person who in good faith either assists or deals

1 for value with a personal representative ~~or deals with him or~~
2 ~~her for value~~ is protected as if the personal representative
3 acted properly ~~exercised his or her power~~. The fact that a
4 person knowingly deals with the personal representative does
5 not ~~alone~~ require the person to inquire into the authority of
6 the personal representative ~~existence of his or her power, the~~
7 ~~limits on the power, or the propriety of its exercise~~. A
8 person is not bound to see to the proper application of estate
9 assets paid or delivered to the personal representative. This
10 ~~The protection here expressed~~ extends to instances in which a
11 procedural irregularity or jurisdictional defect occurred in
12 proceedings leading to the issuance of letters, including a
13 case in which the alleged decedent is alive. This protection
14 is in addition to any protection afforded by ~~The protection~~
15 ~~here expressed is not by substitution for that provided in~~
16 comparable provisions of the laws relating to commercial
17 transactions and laws simplifying transfers of securities by
18 fiduciaries.

19 Section 135. Section 733.612, Florida Statutes, is
20 amended to read:

21 733.612 Transactions authorized for the personal
22 representative; exceptions.--Except as otherwise provided by
23 the will or court ~~by order of court~~, and subject to the
24 priorities stated in s. 733.805, without court ~~order of court~~,
25 a personal representative, acting reasonably for the benefit
26 of the interested persons, may properly:

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

31

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

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

9 (b) Deliver a deed in escrow, with directions that the
10 proceeds, when paid in accordance with the escrow agreement,
11 be paid as provided ~~to the distributees of the decedent, as~~
12 ~~designated~~ in the escrow agreement.

13 (3) Receive assets from fiduciaries or other sources.

14 (4) Invest funds as provided in ss. 518.10-518.14,
15 considering the amount to be invested, liquidity needs of the
16 estate, and the time until distribution will be made ~~if funds~~
17 ~~are not needed to meet debts and expenses currently payable~~
18 ~~and are not immediately distributable, deposit or invest~~
19 ~~liquid assets of the estate, including moneys received from~~
20 ~~the sale of other assets, in federally insured~~
21 ~~interest-bearing accounts, readily marketable secured loan~~
22 ~~arrangements, or other prudent investments that would be~~
23 ~~reasonable for use by trustees.~~

24 (5) Acquire or dispose of an asset, excluding real
25 property in this or another state, for cash or on credit and
26 at public or private sale, and manage, develop, improve,
27 exchange, partition, or change the character of an estate
28 asset.

29 (6) Make ordinary or extraordinary repairs or
30 alterations in buildings or other structures; demolish
31 improvements; or erect new party walls or buildings.

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

4 (8) Enter into a lease or arrangement for exploration
5 and removal of minerals or other natural resources or enter
6 into a pooling or unitization agreement.

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

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

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

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

19 (13) Insure the assets of the estate against damage
20 ~~or loss, and liability~~ and insure against personal and
21 fiduciary liability ~~himself or herself against liability~~ to
22 third persons.

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

26 (15) Extend, renew, or in any manner modify any
27 obligation owing to the estate. If the personal representative
28 holds a mortgage, security interest, or other lien upon
29 property of another person, he or she may accept a conveyance
30 or transfer of encumbered assets from the owner in
31

1 satisfaction of the indebtedness secured by its lien instead
2 of foreclosure.

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

5 (17) Sell or exercise stock subscription or conversion
6 rights or consent, directly or through a committee or other
7 agent, to the reorganization, consolidation, merger,
8 dissolution, or liquidation of a corporation or other business
9 enterprise.

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

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

26 (20) Prosecute or defend claims or proceedings in any
27 jurisdiction for the protection of the estate and of the
28 personal representative ~~in the performance of his or her~~
29 ~~duties~~.

30 (21) Sell, mortgage, or lease any personal property of
31 the estate or any interest in it for cash, credit, or for part

1 cash or part credit, and with or without security for the
2 unpaid balance.

3 (22) Continue any unincorporated business or venture
4 in which the decedent was engaged at the time of ~~his or her~~
5 death:

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

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

12 (23) Provide for exoneration of the personal
13 representative from personal liability in any contract entered
14 into on behalf of the estate.

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

17 (25) Enter into agreements with the proper officer or
18 department head, commissioner, or agent of any department of
19 the government of the United States, waiving the statute of
20 limitations concerning the assessment and collection of any
21 federal tax or any deficiency in a federal tax.

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

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

30 Section 136. Section 733.6121, Florida Statutes, is
31 amended to read:

1 733.6121 Powers of personal representatives conferred
2 by this part in relation to environmental or human health laws
3 affecting property subject to administration or to property
4 subject to administration contaminated with hazardous or toxic
5 substances; liability.--

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

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

13 (a) To inspect or investigate, or cause to be
14 inspected or investigated, property subject to administration,
15 including interests in sole proprietorships, partnerships, or
16 corporations and any assets owned by ~~any~~ such a business
17 entity for the purpose of determining compliance with an
18 environmental law affecting that property or to respond to an
19 actual or threatened violation of an environmental law
20 affecting that property;

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

26 (c) To settle or compromise at any time any claim
27 against the estate or the personal representative that may be
28 asserted by a governmental body or private party which
29 involves the alleged violation of an environmental law
30 affecting property subject to administration over which the
31 personal representative has responsibility;

1 (d) To disclaim any power granted by any document,
2 statute, or rule of law which, in the sole judgment of the
3 personal representative, could cause the personal
4 representative to incur personal liability, or the estate to
5 incur liability, under any environmental law;

6 (e) To decline to serve as a personal representative,
7 or having undertaken to serve ~~as a personal representative~~, to
8 resign at any time, if the personal representative believes
9 that there is or could be a conflict of interest ~~in his or her~~
10 ~~fiduciary capacity and in his or her individual capacity~~
11 because of potential claims or liabilities that could be
12 asserted ~~against it~~ on behalf of the estate by reason of the
13 type or condition of the assets held; or

14 (f) To charge against the assets of the estate the
15 cost of any inspection, investigation, review, abatement,
16 response, cleanup, or remedial action considered reasonable by
17 the personal representative ~~that this section authorizes the~~
18 ~~personal representative to take~~; and, in the event of the
19 closing or termination of the estate or the transfer of the
20 estate property to another personal representative, to hold
21 moneys sufficient to cover the cost of cleaning up any known
22 environmental problem.

23 (3) A personal representative is not personally liable
24 to any beneficiary or any other party for a decrease in value
25 of assets in an estate by reason of the personal
26 representative's compliance or efforts to comply with an
27 environmental law, specifically including any reporting
28 requirement under that law.

29 (4) A personal representative who acquires ownership
30 or control of a vessel or other property without having owned,
31 operated, or materially participated in the management of that

1 vessel or property before assuming ownership or control as
2 personal representative is not considered an owner or operator
3 for purposes of liability under chapter 376, chapter 403, or
4 any other environmental law. A personal representative who
5 willfully, knowingly, or recklessly causes or exacerbates a
6 release or threatened release of a hazardous substance is
7 personally liable for the cost of the response, to the extent
8 that the release or threatened release is attributable to the
9 personal representative's activities. This subsection does
10 not preclude the filing of claims against the assets that
11 constitute the estate held by the personal representative or
12 the filing of actions against the personal representative as
13 representative of the estate ~~in his or her representative~~
14 ~~capacity~~. In any such an action, an award or judgment against
15 the personal representative must be satisfied only from the
16 assets of the estate.

17 (5) Neither the acceptance by the personal
18 representative of the property or a failure by the personal
19 representative to inspect or investigate the property creates
20 any inference of ~~as to whether there is~~ liability under an
21 environmental law with respect to that property.

22 (6) For the purposes of this section, the term
23 "environmental law" means a federal, state, or local law,
24 rule, regulation, or ordinance that relates to protection of
25 the environment or human health, and the term "hazardous
26 substance" means a substance, material, or waste defined as
27 hazardous or toxic, or any contaminant, pollutant, or
28 constituent thereof, or otherwise regulated by an
29 environmental law.

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

1 Section 137. Section 733.613, Florida Statutes, is
2 amended to read:

3 733.613 Personal representative's right to sell real
4 property.--

5 (1) When a personal representative of an ~~a decedent~~
6 ~~dying~~ intestate estate, or whose testator has not conferred
7 ~~upon him or her~~ a power of sale or whose testator has granted
8 a power of sale but the ~~his or her~~ power is so limited by the
9 will or by operation of law that it cannot be conveniently
10 exercised, shall consider that it is for the best interest of
11 the estate and of those interested in it that real property be
12 sold, the personal representative may sell it at public or
13 private sale. No title shall pass until ~~the sale is~~
14 authorized or confirmed by the court authorizes or confirms
15 the sale. ~~Petition for authorization or confirmation of sale~~
16 ~~shall set forth the reasons for the sale, a description of the~~
17 ~~property sold or to be sold, and the price and terms of the~~
18 ~~sale. Except when interested persons have joined in the~~
19 ~~petition for sale of real property or have consented to the~~
20 ~~sale, notice of the petition shall be given.~~No bona fide
21 purchaser shall be required to examine any proceedings before
22 the order of sale.

23 (2) When a decedent's will confers specific power to
24 sell or mortgage real property or a general power to sell any
25 asset of the estate, the personal representative may sell,
26 mortgage, or lease, without authorization or confirmation of
27 court, any real property of the estate or any interest therein
28 for cash or credit, or for part cash and part credit, and with
29 or without security for unpaid balances. The sale, mortgage,
30 or lease need not be justified by a showing of necessity, and
31 the sale pursuant to power of sale shall be valid.

1 (3) In a sale or mortgage which occurs under a
2 specific power to sell or mortgage real property, or under a
3 court order authorizing or confirming that act, the purchaser
4 or lender takes title free of claims of creditors of the
5 estate and entitlements of estate beneficiaries, except
6 existing mortgages or other liens against real property are
7 not affected.

8 Section 138. Section 733.614, Florida Statutes, is
9 amended to read:

10 733.614 Powers and duties of successor personal
11 representative.--A successor personal representative has the
12 same power and duty as the original personal representative to
13 complete the administration and distribution of the estate as
14 expeditiously as possible, but ~~he or she~~ shall not exercise
15 any power made personal to the personal representative named
16 in the will without court approval.

17 Section 139. Section 733.615, Florida Statutes, is
18 amended to read:

19 733.615 Joint personal representatives; when joint
20 action required.--

21 (1) If two or more persons are appointed joint
22 personal representatives, and unless the will provides
23 otherwise, the concurrence of all joint personal
24 representatives appointed pursuant to a will or codicil
25 executed prior to October 1, 1987, or appointed to administer
26 an intestate estate of a decedent who died prior to October 1,
27 1987, or of a majority of joint personal representatives
28 appointed pursuant to a will or codicil executed on or after
29 October 1, 1987, or appointed to administer an ~~the~~ intestate
30 estate of a decedent dying on or after October 1, 1987, is
31 required on all acts connected with the administration and

1 distribution of the estate. This restriction does not apply
2 when any joint personal representative receives and receipts
3 for property due the estate, when the concurrence required
4 under this subsection cannot readily be obtained in the time
5 reasonably available for emergency action necessary to
6 preserve the estate, or when a joint personal representative
7 has been delegated to act for the others.

8 (2) Where action by a majority of the joint personal
9 representatives appointed is authorized, a joint personal
10 representative who has not joined in exercising a power is not
11 liable to the beneficiaries or to others for the consequences
12 of the exercise, and a dissenting joint personal
13 representative is not liable for the consequences of an action
14 ~~act~~ in which the dissenting personal representative ~~he or she~~
15 joins at the direction of the majority of the joint personal
16 representatives, if the dissent is ~~he or she~~ expressed ~~his or~~
17 ~~her dissent~~ in writing to the other ~~any of his or her~~ joint
18 personal representatives at or before the time of the action
19 ~~joinder~~.

20 (3) A person dealing with a joint personal
21 representative without actual knowledge that joint personal
22 representatives have been appointed or if advised by a ~~the~~
23 joint personal representative ~~with whom he or she deals~~ that
24 the joint personal representative has authority to act alone
25 for any of the reasons mentioned in subsection (1) is as fully
26 protected in dealing with that joint personal representative
27 as if that joint personal representative possessed and
28 properly exercised the power ~~he or she purports to exercise~~.

29 Section 140. Section 733.616, Florida Statutes, is
30 amended to read:

31

1 733.616 Powers of surviving personal
2 representatives.--Unless otherwise provided by the terms of
3 the will or a court order ~~otherwise provide~~, every power
4 exercisable by joint personal representatives may be exercised
5 by the one or more remaining after the appointment of one or
6 more is terminated., ~~and~~ If one or more, but not all,
7 nominated as joint personal representatives are not appointed,
8 those appointed may exercise all ~~the~~ powers granted to those
9 nominated ~~incident to the office~~.

10 Section 141. Section 733.617, Florida Statutes, is
11 amended to read:

12 733.617 Compensation of personal representative.--

13 (1) A personal representative shall be entitled to a
14 commission payable from the estate assets without court order
15 as compensation for ordinary services. The commission shall
16 be based on the compensable value of the estate, which is the
17 inventory value of the probate estate assets and the income
18 earned by the estate during administration ~~As compensation for~~
19 ~~its ordinary services, a personal representative shall be~~
20 ~~entitled, without order of court unless otherwise stated, to a~~
21 ~~commission payable from the estate assets. Such commission~~
22 ~~shall be based upon the probate estate's value as determined~~
23 ~~finally for probate inventory purposes and as accounted for by~~
24 ~~the personal representative, which value shall include all~~
25 ~~property, real or personal, tangible or intangible, and all~~
26 ~~income earned thereon.~~

27 (2) A commission computed on the compensable value of
28 the estate is presumed to be reasonable compensation for a
29 personal representative in formal administration ~~Upon the~~
30 ~~probate estate's value as defined in subsection (1), such~~
31 ~~commission shall be computed as follows:~~

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

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

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

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

8 (3) In addition to the previously described aforesaid
9 commission, a personal representative shall be allowed ~~such~~
10 further compensation as is ~~the court may deem just and~~
11 reasonable for any extraordinary services including, but not
12 limited to:

13 (a) The sale of real or personal property.

14 (b) The conduct of litigation on behalf of or against
15 the estate.

16 (c) Involvement in proceedings for the adjustment or
17 payment of any taxes.

18 (d) The carrying on of the decedent's business.

19 (e) Dealing with protected homestead.

20 (f)~~(e)~~ Any other special services which may be
21 necessary for the personal representative to perform.

22 (4) If the ~~a decedent's~~ will provides that a personal
23 representative's compensation shall be based upon specific
24 criteria, other than a general reference to commissions
25 allowed by law or words or similar import, including, but not
26 limited to, rates, amounts, commissions, or reference to the
27 personal representative's regularly published schedule of fees
28 in effect at the decedent's date of death, or words of similar
29 import, then a personal representative shall be entitled to
30 compensation in accordance with that ~~such~~ provision. However,
31 except for ~~such~~ references in the ~~a decedent's~~ will to the

1 personal representative's regularly published schedule of fees
2 in effect at the decedent's date of death, or words of similar
3 import, if there is no written contract with the decedent
4 regarding compensation, a personal representative may renounce
5 the provisions contained in the will and be entitled to
6 compensation under this section ~~hereunder~~. A personal
7 representative may also renounce the ~~its~~ right to all or any
8 part of the compensation.

9 (5) If the probate estate's compensable value ~~as~~
10 ~~defined in subsection (1)~~ is \$100,000 or more, and there are
11 two representatives, each personal representative is entitled
12 to the full commission allowed to a sole personal
13 representative. If there are more than two personal
14 representatives and the probate estate's compensable value is
15 ~~more than~~ \$100,000 or more, the compensation to which two
16 would be entitled must be apportioned among the personal
17 representatives. The basis for ~~such~~ apportionment shall be
18 one full commission allowed to the personal representative who
19 has possession of and primary responsibility for
20 administration of the assets and one full commission among the
21 remaining personal representatives according to the services
22 rendered by each of them respectively. If the probate
23 estate's compensable value is less than \$100,000 and there is
24 more than one personal representative, then one full
25 ~~commission allowed herein to a sole personal representative~~
26 must be apportioned among the personal representatives
27 according to the services rendered by each of them
28 respectively.

29 (6) If the personal representative is a member of The
30 Florida Bar and has rendered legal services in connection with
31 the administration of the estate, then in addition to a fee as

1 personal representative, there also shall be allowed a fee for
2 the legal services rendered.

3 (7) Upon petition of any interested person, the court
4 may increase or decrease the compensation for ordinary
5 services of the personal representative or award compensation
6 for extraordinary services if the facts and circumstances of
7 the particular administration warrant. In determining
8 reasonable compensation, the court shall consider all of the
9 following factors, giving weight to each as it determines to
10 be appropriate ~~The compensation for a personal representative~~
11 ~~as set forth in subsections (2) and (3) may, upon petition of~~
12 ~~any interested person, be increased or decreased by the court.~~
13 ~~In determining whether to increase or decrease the~~
14 ~~compensation for ordinary services, the court must consider~~
15 ~~each of the following factors, giving each such weight as it~~
16 ~~determines to be appropriate:~~

17 (a) The promptness, efficiency, and skill with which
18 the administration was handled by the personal representative;

19 (b) The responsibilities assumed by and the potential
20 liabilities of the personal representative;

21 (c) The nature and value of the assets that are
22 affected by the decedent's death;

23 (d) The benefits or detriments resulting to the estate
24 or interested persons ~~its beneficiaries~~ from the personal
25 representative's services;

26 (e) The complexity or simplicity of the administration
27 and the novelty ~~novelties~~ of the issues presented;

28 (f) The personal representative's participation in tax
29 planning for the estate and the estate's beneficiaries and in
30 tax return preparation, review, or approval;

31

1 (g) The nature of the probate, nonprobate, and exempt
2 assets, ~~the~~ expenses of administration, ~~the~~ liabilities of
3 the decedent, ~~and~~ the compensation paid to other
4 professionals and fiduciaries;

5 (h) Any delay in payment of the compensation after the
6 services were furnished; and

7 (i) Any other relevant factors.

8 Section 142. Section 733.6171, Florida Statutes, is
9 amended to read:

10 733.6171 Compensation of attorney for the personal
11 representative.--

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

15 (2) The attorney, the personal representative, and
16 persons bearing the impact of the compensation may agree to
17 compensation determined in a different manner than provided in
18 this section. Compensation may also be determined in a
19 different manner than provided in this section if the manner
20 is disclosed to the parties bearing the impact of the
21 compensation and if no objection is made as provided for in
22 the Florida Probate Rules in the petition for discharge or
23 final accounting and there is no objection filed pursuant to
24 s. 733.901.

25 (3) Compensation ~~provided in the following schedule~~
26 for ordinary services of attorneys in formal estate
27 administration is presumed to be reasonable if based on the
28 compensable upon the inventory value of the estate, which is
29 the inventory value of the probate estate assets and the
30 income earned by the estate during the administration as
31 provided in the following schedule is presumed to be

1 ~~reasonable compensation for attorneys in formal estate~~
2 ~~administration:~~

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

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

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

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

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

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

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

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

19 (4) In addition to ~~the attorney's~~ fees for ordinary
20 services, the attorney for the personal representative shall
21 be allowed further reasonable compensation for any
22 extraordinary service. What is an extraordinary service may
23 vary depending on many factors, including the size of the
24 estate. Extraordinary services may include, but are not
25 limited to:

26 (a) Involvement in a will contest, will construction,
27 a proceeding for determination of beneficiaries, a contested
28 claim, elective share proceeding, apportionment of estate
29 taxes, or any ~~other~~ adversarial proceeding or litigation by or
30 against the estate.

31

1 (b) Representation of the personal representative in
2 audit or any proceeding for adjustment, determination, or
3 collection of any taxes.

4 (c) Tax advice on postmortem tax planning, including,
5 but not limited to, disclaimer, renunciation of fiduciary
6 commission, alternate valuation date, allocation of
7 administrative expenses between tax returns, the QTIP or
8 reverse QTIP election, allocation of GST exemption,
9 qualification for Internal Revenue Code ss. 6166 and 303
10 privileges, deduction of last illness expenses, fiscal year
11 planning, distribution planning, asset basis considerations,
12 handling income or deductions in respect of a decedent,
13 valuation discounts, special use and other valuation, handling
14 employee benefit or retirement proceeds, prompt assessment
15 request, or request for release of personal liability for
16 payment of tax.

17 (d) Review of estate tax return and preparation or
18 review of other tax returns required to be filed by the
19 personal representative.

20 (e) Preparation of the estate's federal estate tax
21 return. If this return is prepared by the attorney, a fee of
22 one-half of 1 percent up to a value of \$10 million and
23 one-fourth of 1 percent on the value in excess of \$10 million
24 of the gross estate as finally determined for federal estate
25 tax purposes, is presumed to be reasonable compensation for
26 the attorney for this service. These fees shall include
27 services for routine audit of the return, not beyond the
28 examining agent level, if required.

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

1 (g) Legal advice regarding carrying on of the
2 decedent's business or conducting other commercial activity by
3 the personal representative.

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

6 (i) Legal advice regarding homestead status of real
7 property or proceedings involving that status and services
8 related to protected homestead.

9 (j) Involvement in fiduciary, employee, or attorney
10 compensation disputes.

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

13 (5) Upon petition of any interested person, the court
14 may increase or decrease the compensation for ordinary
15 services of the attorney or award compensation for
16 extraordinary services if the facts and circumstances of the
17 particular administration warrant. In determining reasonable
18 compensation, the court shall consider all of the following
19 factors, giving such weight to each as it determines ~~may~~
20 ~~determine~~ to be appropriate:

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

23 (b) The responsibilities assumed by, ~~and~~ the potential
24 liabilities of, ~~the~~ attorney.

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

27 (d) The benefits or detriments resulting to the estate
28 or interested persons ~~its beneficiaries~~ from the attorney's
29 services.

30 (e) The complexity or simplicity of the administration
31 and the novelty of issues presented.

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

4 (g) The nature of the probate, nonprobate, and exempt
5 assets, the expenses of administration, the ~~and~~ liabilities of
6 the decedent, and the compensation paid to other professionals
7 and fiduciaries.

8 (h) Any delay in payment of the compensation after the
9 services were furnished.

10 (i) Any other relevant factors.

11 ~~(6) The court may determine reasonable attorney's~~
12 ~~compensation without receiving expert testimony. Any party~~
13 ~~may offer expert testimony after notice to interested persons.~~
14 ~~If expert testimony is offered, an expert witness fee may be~~
15 ~~awarded by the court and paid from the assets of the estate.~~
16 ~~The court may, in its discretion, direct from what part of the~~
17 ~~estate it shall be paid.~~

18 (6)(7) If a separate written agreement regarding
19 compensation exists between the attorney and the decedent, the
20 attorney shall furnish a copy to the personal representative
21 prior to commencement of employment, and, if employed, shall
22 promptly file and serve a copy on all interested persons.
23 Neither a separate agreement nor a provision in the will
24 suggesting or directing that the personal representative ~~to~~
25 retain a specific attorney will obligate the personal
26 representative to employ the attorney or obligate the attorney
27 to accept the representation, but if the attorney who is a
28 party to the agreement or who drafted the will is employed,
29 the compensation paid shall not exceed the compensation
30 provided in the agreement or in the will.

31

1 ~~(8) Court proceedings to determine compensation, if~~
2 ~~required, are a part of the estate administration process, and~~
3 ~~the costs, including fees for the personal representative's~~
4 ~~attorney, shall be determined by the court and paid from the~~
5 ~~assets of the estate unless the court finds the request for~~
6 ~~attorney's fees to be substantially unreasonable. The court~~
7 ~~shall direct from which part of the estate they shall be paid.~~

8 ~~(9) The amount and manner of determining compensation~~
9 ~~for attorneys for personal representatives must be disclosed~~
10 ~~in the final accounting, unless the disclosure is waived in~~
11 ~~writing signed by the parties bearing the impact of the~~
12 ~~compensation and filed with the court. No such waiver shall~~
13 ~~be valid unless it contains language declaring that the~~
14 ~~waiving party has actual knowledge of the amount and manner of~~
15 ~~determining such compensation and, in addition, expressly~~
16 ~~acknowledging either one of the following two elements:~~

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

20 ~~(b) That the waiving party has the right under~~
21 ~~subsection (5) to petition the court to decrease such~~
22 ~~compensation and is waiving that right.~~

23
24 ~~The requirements of this subsection shall not apply if the~~
25 ~~full amount of such compensation has previously been~~
26 ~~determined by order of the court after notice. A waiver of~~
27 ~~the final accounting shall not be effective if it does not~~
28 ~~meet the requirements of this subsection.~~

29 ~~(10) This section shall apply to estates in which an~~
30 ~~order of discharge has not been entered prior to its effective~~
31

1 ~~date but not to those estates in which attorney's fees have~~
2 ~~previously been determined by order of court after notice.~~

3 Section 143. Section 733.6175, Florida Statutes, is
4 amended to read:

5 733.6175 Proceedings for review of employment of
6 agents and compensation of personal representatives and
7 employees of estate.--

8 (1) The court may review the propriety of the
9 employment of any person employed by the personal
10 representative and the reasonableness of any compensation paid
11 to that person or to the personal representative.

12 (2) Court proceedings to determine reasonable
13 compensation of the personal representative or any person
14 employed by the personal representative, if required, are a
15 part of the estate administration process, and the costs,
16 including attorneys' fees, of the person assuming the burden
17 of proof of propriety of the employment and reasonableness of
18 the compensation shall be determined by the court and paid
19 from the assets of the estate unless the court finds the
20 requested compensation to be substantially unreasonable. The
21 court shall direct from which part of the estate the
22 compensation shall be paid.

23 ~~(3) After notice to all affected interested persons~~
24 ~~and upon petition of an interested person bearing all or part~~
25 ~~of the impact of the payment of compensation to the personal~~
26 ~~representative or any person employed by him or her, the~~
27 ~~propriety of such employment and the reasonableness of such~~
28 ~~compensation or payment may be reviewed by the court. The~~
29 ~~burden of proof of propriety of the such employment and the~~
30 ~~reasonableness of the compensation shall be upon the personal~~
31 ~~representative and the person employed by him or her. Any~~

1 person who is determined to have received excessive
2 compensation from an estate for services rendered may be
3 ordered to make appropriate refunds.

4 (4) The court may determine reasonable compensation
5 for the personal representative or any person employed by the
6 personal representative without receiving expert testimony.
7 Any party may offer expert testimony after notice to
8 interested persons. If expert testimony is offered, a
9 reasonable expert witness fee shall be awarded by the court
10 and paid from the assets of the estate. The court shall direct
11 from what part of the estate the fee shall be paid.

12 Section 144. Section 733.619, Florida Statutes, is
13 amended to read:

14 733.619 Individual liability of personal
15 representative.--

16 (1) Unless otherwise provided in the contract, a
17 personal representative is not individually liable on a
18 contract, except a contract for attorney's fee, properly
19 entered into ~~as in his or her~~ fiduciary capacity ~~in the~~
20 ~~administration of the estate~~ unless the personal
21 representative fails to reveal that ~~his or her~~ representative
22 capacity and identify the estate in the contract.

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

27 (3) Claims based on contracts, except a contract for
28 attorney's fee, entered into by a personal representative as a
29 fiduciary ~~in his or her fiduciary capacity~~, on obligations
30 arising from ownership or control of the estate, or on torts
31 committed in the course of estate administration, may be

1 asserted against the estate by proceeding against the personal
2 representative in that ~~his or her~~ fiduciary capacity, whether
3 or not the personal representative is individually liable
4 ~~therefor~~.

5 (4) Issues of liability as between the estate and the
6 personal representative individually may be determined in a
7 proceeding for accounting, surcharge, or indemnification, or
8 other appropriate proceeding.

9 Section 145. Section 733.701, Florida Statutes, is
10 amended to read:

11 733.701 Notifying creditors.--Unless creditors' claims
12 are otherwise barred by s. 733.710 ~~the proceedings are under~~
13 ~~chapter 734 or chapter 735~~, every personal representative
14 shall cause notice to creditors ~~of administration~~ to be
15 published and served under s. 733.2121 ~~733.212~~.

16 Section 146. Section 733.702, Florida Statutes, is
17 amended to read:

18 733.702 Limitations on presentation of claims.--

19 (1) If not barred by s. 733.710, no claim or demand
20 against the decedent's estate that arose before the death of
21 the decedent, including claims of the state and any of its
22 subdivisions, even if the claims are unmatured, contingent,
23 ~~whether due or not, direct or contingent, or liquidated or~~
24 ~~unliquidated; no claim for funeral or burial expenses; no~~
25 ~~claim for personal property in the possession of the personal~~
26 ~~representative; and no claim for damages, including, but not~~
27 ~~limited to, an action founded on fraud or another wrongful act~~
28 ~~or omission of the decedent, is binding on the estate, on the~~
29 ~~personal representative, or on any beneficiary unless filed in~~
30 the probate proceeding within the later of 3 months after the
31 time of the first publication of the notice to creditors ~~of~~

1 ~~administration~~ or, as to any creditor required to be served
2 with a copy of the notice to creditors ~~of administration~~, 30
3 days after the date of service ~~of such copy of the notice~~ on
4 the creditor, even though the personal representative has
5 recognized the claim or demand by paying a part of it or
6 interest on it or otherwise. The personal representative may
7 settle in full any claim without the necessity of the claim
8 being filed when the settlement has been approved by the
9 interested persons ~~beneficiaries adversely affected according~~
10 ~~to the priorities provided in this code and when the~~
11 ~~settlement is made within the statutory time for filing~~
12 ~~claims; or, within 3 months after the first publication of the~~
13 ~~notice of administration, he or she may file a proof of claim~~
14 ~~of all claims he or she has paid or intends to pay.~~

15 (2) No cause of action ~~heretofore or hereafter~~
16 ~~accruing~~, including, but not limited to, an action founded
17 upon fraud or other wrongful act or omission, shall survive
18 the death of the person against whom the claim may be made,
19 whether or not an action is pending at the death of the person
20 ~~or not~~, unless a the claim is filed within the time periods
21 set forth in this part.

22 (3) Any claim not timely filed as provided in this
23 section is barred even though no objection to the claim is
24 ~~filed on the grounds of timeliness or otherwise~~ unless the
25 court extends the time in which the claim may be filed. ~~Such~~
26 An extension may be granted only upon grounds of fraud,
27 estoppel, or insufficient notice of the claims period. No
28 independent action or declaratory action may be brought upon a
29 claim which was not timely filed unless ~~such~~ an extension has
30 been granted by the court. If the personal representative or
31 any other interested person serves on the creditor a notice to

1 file a petition for an extension ~~or be forever barred~~, the
2 creditor shall be limited to a period of 30 days from the date
3 of service of the notice in which to file a petition for
4 extension.

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

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

8 (b) To the limits of casualty insurance protection
9 only, any proceeding to establish liability that ~~of the~~
10 ~~decedent or the personal representative for which he or she is~~
11 protected by the casualty insurance.

12 ~~(c) The filing of a claim by the Department of Revenue~~
13 ~~subsequent to the expiration of the time for filing claims~~
14 ~~provided in subsection (1), provided it does so file within 30~~
15 ~~days after the service of the inventory by the personal~~
16 ~~representative on the department or, in the event an amended~~
17 ~~or supplementary inventory has been prepared, within 30 days~~
18 ~~after the service of the amended or supplementary inventory by~~
19 ~~the personal representative on the department.~~

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

24 (5) The Department of Revenue may file a claim against
25 the estate of a decedent for taxes due under chapter 199 after
26 the expiration of the time for filing claims provided in
27 subsection (1), if the department files its claim within 30
28 days after the service of the inventory. Upon filing of the
29 estate tax return with the department as provided in s.
30 198.13, or to the extent the inventory or estate tax return is
31 amended or supplemented, the department has the right to file

1 a claim or to amend its previously filed claim within 30 days
2 after service of the estate tax return, or an amended or
3 supplemented inventory or filing of an amended or supplemental
4 estate tax return, as to the additional information disclosed.

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

7 Section 147. Subsection (2) of section 733.703,
8 Florida Statutes, is amended to read:

9 733.703 Form and manner of presenting claim.--

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

19 Section 148. Section 733.704, Florida Statutes, is
20 amended to read:

21 733.704 Amendment of claims.--If a bona fide attempt
22 to file a claim is made ~~by a creditor~~ but the claim is
23 defective as to form, the court may permit the amendment of
24 the claim at any time.

25 Section 149. Section 733.705, Florida Statutes, is
26 amended to read:

27 733.705 Payment of and objection to claims.--

28 (1) The personal representative shall pay all claims
29 within 1 year from the date of first publication of notice to
30 creditors ~~of administration~~, provided that the time shall be
31 extended with respect to claims in litigation, unmatured

1 claims, and contingent claims for the period necessary to
2 dispose of those ~~such~~ claims pursuant to subsections ~~(4)~~, (5),
3 (6), ~~and (7)~~, and (8). The court may extend the time for
4 payment of any claim upon a showing of good cause. No
5 personal representative shall be compelled to pay the debts of
6 the decedent until after the expiration of 5 months from the
7 first publication of notice to creditors ~~of administration~~.
8 If any person brings an action against a personal
9 representative within the 5 months on any claim to which the
10 personal representative has not filed an ~~no~~ objection, the
11 plaintiff shall not receive any costs or attorneys' fees ~~if he~~
12 ~~or she prevails~~, nor shall the judgment change the class of
13 the claim for payment under this code.

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

1 ~~claimant's attorney of record, if any, not later than 10 days~~
2 ~~after the objection has been filed, and also on the personal~~
3 ~~representative if the objection is filed by any interested~~
4 ~~person other than the personal representative. The failure to~~
5 ~~serve a copy of the objection constitutes an abandonment of~~
6 ~~the objection. For good cause, the court may extend the time~~
7 ~~for filing or serving an objection to any claim ~~or may extend~~~~
8 ~~the time for serving the objection. The extension of time~~
9 ~~shall be granted only after notice. Objection to a claim~~
10 ~~constitutes an objection to an amendment of that claim unless~~
11 ~~the objection is withdrawn.~~

12 (3) If the objection is filed by a person other than
13 the personal representative, the personal representative may
14 apply to the court for an order relieving him or her from the
15 obligation to defend the estate in an independent action or
16 for the appointment of the objector as administrator ad litem
17 to defend the action. Fees for the attorney for the
18 administrator ad litem may be awarded as provided in s.
19 733.106(3). If costs or attorney's fees are awarded from or
20 against the estate, the probate court may charge or apportion
21 that award as provided in s. 733.106(4).

22 ~~(4)~~(3) An objection by an interested person to a
23 personal representative's proof of claim shall state the
24 particular item or items to which the interested person
25 objects and shall be filed and served as provided in
26 subsection (2). Issues of liability as between the estate and
27 the personal representative individually for items ~~paid by the~~
28 ~~personal representative and thereafter~~ listed in a personal
29 representative's proof of claim shall be determined in the
30 estate administration ~~proceeding~~, in a proceeding for
31 accounting ~~or~~ surcharge, or in another ~~other~~ appropriate

1 proceeding, whether or not an objection has been filed. If an
2 objection to an item listed as to be paid in a personal
3 representative's proof of claim is filed and served, and the
4 personal representative has not paid the item, the other
5 subsections of this section shall apply as if a claim for the
6 item had been filed by the claimant; but if the personal
7 representative has paid the claim after listing it as to be
8 paid, issues of liability as between the estate and the
9 personal representative individually shall be determined in
10 the manner provided for an item listed as paid.

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

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

6 (7)~~(6)~~ If an unmatured claim has not become due before
7 the time for distribution of an estate, the personal
8 representative may prepay the full amount of principal plus
9 accrued interest due on the claim, without discount and
10 without penalty, regardless of any prohibition against
11 prepayment or provision for penalty in any instrument on which
12 the claim is founded. If the claim is not prepaid, no order
13 of discharge may be entered until the creditor and personal
14 representative have filed an agreement disposing of the claim,
15 or in the absence of an agreement until the court provides for
16 payment by one of the following methods:

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

31

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

7 (c) Making provisions ~~such other provision~~ for the
8 disposition or satisfaction of the claim as are ~~is~~ equitable,
9 and in a manner so as not to delay unreasonably the closing of
10 the estate.

11 (8)~~(7)~~ If no cause of action has accrued on a
12 contingent claim before the time for distribution of an
13 estate, no order of discharge may be entered until the
14 creditor and the personal representative have filed an
15 agreement disposing of the claim or, in the absence of an ~~such~~
16 agreement, until:

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

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

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

24 (d) The court provides for payment of the claim upon
25 the happening of the contingency by one of the methods
26 described in paragraph (a), paragraph (b), or paragraph (c) of
27 subsection (7)~~(6)~~,

28
29 whichever occurs first. No action or proceeding on the claim
30 may be brought against the personal representative after the
31 time limited above, and the claim is barred without court

1 order. If an objection is filed to the claim of any creditor
2 and the creditor brings an action to establish the claim, a
3 judgment establishing the claim shall give it no priority over
4 claims of the same class to which it belongs ~~No action or~~
5 ~~proceeding may be brought against the personal representative~~
6 ~~on the claim after the time limited above, and any such claim~~
7 ~~shall thereafter be forever barred without order of court. If~~
8 ~~an action is brought within the time limited above, a judgment~~
9 ~~establishing the claim shall give it no priority over claims~~
10 ~~of the same class to which it belongs.~~

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

22 ~~(10)(9) The court may determine all issues concerning~~
23 ~~claims or matters not requiring trial by jury.~~

24 ~~(11)(10) An order for extension of time authorized~~
25 ~~under this section may be entered only in the estate~~
26 ~~administration proceeding.~~

27 Section 150. Section 733.707, Florida Statutes, is
28 amended to read:

29 733.707 Order of payment of expenses and
30 obligations.--

31

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

4 (a) Class 1.--Costs, expenses of administration, and
5 compensation of personal representatives and their attorneys
6 ~~attorneys' fees and attorneys fees awarded under s.~~
7 733.106(3).

8 (b) Class 2.--Reasonable funeral, interment, and grave
9 marker expenses, whether paid by a guardian ~~under s.~~
10 ~~744.441(16)~~, the personal representative, or any other person,
11 not to exceed the aggregate of \$6,000.

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

14 (d) Class 4.--Reasonable and necessary medical and
15 hospital expenses of the last 60 days of the last illness of
16 the decedent, including compensation of persons attending the
17 decedent ~~him or her~~.

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

19 (f) Class 6.--Arrearage from court-ordered child
20 support.

21 (g) Class 7.--Debts acquired after death by the
22 continuation of the decedent's business, in accordance with s.
23 733.612(22), but only to the extent of the assets of that
24 business.

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

29 (2) After paying any preceding class, if the estate is
30 insufficient to pay all of the next succeeding class, the
31

1 creditors of the latter class shall be paid ratably in
2 proportion to their respective claims.

3 (3) Any portion of a trust with respect to which a
4 decedent who is the grantor has at the decedent's death a
5 right of revocation, as defined in paragraph (e), either alone
6 or in conjunction with any other person, is liable for the
7 expenses of the administration and obligations of the
8 decedent's estate ~~and enforceable claims of the decedent's~~
9 ~~creditors~~ to the extent the decedent's estate is insufficient
10 to pay them as provided in s. 733.607(2).

11 (a) For purposes of this subsection, any trusts
12 established as part of, and all payments from, either an
13 employee annuity described in s. 403 of the Internal Revenue
14 Code of 1986, as amended, an Individual Retirement Account, as
15 described in s. 408 of the Internal Revenue Code of 1986, as
16 amended, a Keogh (HR-10) Plan, or a retirement or other plan
17 established by a corporation which is qualified under s. 401
18 of the Internal Revenue Code of 1986, as amended, shall not be
19 considered a trust over which the decedent has a right of
20 revocation.

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

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

29 (d) For purposes of this subsection, property held or
30 received by a trust to the extent that the property would not
31 have been subject to claims against the decedent's estate if

1 it had been paid directly to a trust created under the
2 decedent's will or other than to the decedent's estate, or
3 assets received from any trust other than a trust described in
4 this subsection, shall not be deemed assets of the trust
5 available to ~~for the payment of the expenses of administration~~
6 ~~of and enforceable claims against~~ the decedent's estate.

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

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

12 2. Withdraw or appoint the principal of the trust to
13 or for the decedent's benefit.

14 Section 151. Section 733.708, Florida Statutes, is
15 amended to read:

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

28 Section 152. Subsection (1) of section 733.710,
29 Florida Statutes, is amended to read:

30 733.710 Limitations on claims against estates.--

31

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

7 Section 153. Section 733.801, Florida Statutes, is
8 amended to read:

9 733.801 Delivery of devises and distributive shares.--

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

14 (2) Except as otherwise provided in the will, the
15 personal representative shall pay as an expense of
16 administration the reasonable expenses of storage, insurance,
17 packing, and delivery of tangible personal property to a
18 beneficiary.

19 Section 154. Subsections (1) and (2) of section
20 733.802, Florida Statutes, are amended to read:

21 733.802 Proceedings for compulsory payment of devises
22 or distributive interest.--

23 (1) Before final distribution, no personal
24 representative shall be compelled:

25 (a) To pay a devise in money before the final
26 settlement of the personal representative's ~~his or her~~
27 accounts,

28 (b) To deliver specific personal property devised ~~that~~
29 ~~may have come into his or her hands~~, unless the personal
30 property is exempt personal property,
31

1 (c) To pay all or any part of a distributive share in
2 the personal estate of a decedent, or

3 (d) To surrender land to any beneficiary,
4

5 unless the beneficiary establishes ~~files a petition setting~~
6 ~~forth the facts that entitle him or her to relief and stating~~
7 that the property will not be required for the payment of
8 debts, family allowance, estate and inheritance taxes, claims,
9 elective share of the surviving spouse, charges, or expenses
10 of administration or to provide ~~for providing~~ funds for
11 contribution or to enforce ~~enforcing~~ equalization in case of
12 advancements.

13 (2) An order directing the surrender of real property
14 or the delivery of personal property by the personal
15 representative to the beneficiary ~~shall describe the property~~
16 ~~to be surrendered or delivered.~~ The order shall be conclusive
17 in favor of bona fide purchasers for value from the
18 beneficiary or distributee as against the personal
19 representative and all other persons claiming by, through,
20 under, or against the decedent or the decedent's estate.

21 Section 155. Section 733.803, Florida Statutes, is
22 amended to read:

23 733.803 Encumbered property; liability for
24 payment.--The specific devisee of any encumbered property
25 shall be entitled to have the encumbrance on devised property
26 paid at the expense of the residue of the estate only when the
27 will shows that ~~such an~~ intent. A general direction in the
28 will to pay debts does not show that ~~such an~~ intent.

29 Section 156. Section 733.805, Florida Statutes, is
30 amended to read:
31

1 733.805 Order in which assets abate are
2 ~~appropriated.--~~

3 (1) ~~If a testator makes provision by his or her will,~~
4 ~~or designates the Funds or property~~ designated by the will
5 ~~shall to be used, to pay for the payment of debts, estate and~~
6 ~~inheritance taxes,~~ family allowance, exempt property, elective
7 share charges, expenses of administration, and devises, to the
8 extent the funds or property are ~~they shall be paid out of the~~
9 ~~funds or from the property or proceeds as provided by the will~~
10 ~~so far as~~ sufficient. If no provision is made or the
11 designated any fund or property designated, or if it is
12 insufficient, the funds and property of the estate shall be
13 used for these such purposes, ~~except as otherwise provided in~~
14 ~~s. 733.817 with respect to estate, inheritance, and other~~
15 ~~death taxes,~~ and to raise the shares of a pretermitted spouse
16 and children, except as otherwise provided in subsections (3)
17 and (4), in the following order:

18 (a) Property passing by intestacy ~~not disposed of by~~
19 ~~the will.~~

20 (b) Property devised to the residuary devisee or
21 devisees.

22 (c) Property not specifically or demonstratively
23 devised.

24 (d) Property specifically or demonstratively devised.

25 (2) Demonstrative devises shall be classed as general
26 devises upon the failure or insufficiency of funds or property
27 out of which payment should be made, to the extent of the
28 insufficiency. Devises to the decedent's surviving spouse,
29 given in satisfaction of, or instead of, the surviving
30 spouse's statutory rights in the estate, shall not abate until
31 other devises of the same class are exhausted. Devises given

1 for a valuable consideration shall abate with other devisees of
2 the same class only to the extent of the excess over the
3 amount of value of the consideration until all others of the
4 same class are exhausted. Except as herein provided, devisees
5 shall abate equally and ratably and without preference or
6 priority as between real and personal property. When property
7 that has been specifically devised or charged with a devise is
8 sold or used ~~taken~~ by the personal representative, other
9 devisees shall contribute according to their respective
10 interests to the devisee whose devise has been sold or used
11 ~~taken.~~, and before distribution the court shall determine The
12 amounts of the respective contributions shall be determined by
13 the court, and ~~they~~ shall be paid or withheld before
14 distribution is made.

15 (3) Section 733.817 shall be applied before this
16 section is applied.

17 (4) In determining the contribution required under s.
18 733.607(2), subsections (1)-(3) of this section and s.
19 737.3054(2) shall be applied as if the beneficiaries of the
20 estate and the beneficiaries of a trust described in s.
21 733.707(3), other than the estate or trust itself, were taking
22 under a common instrument.

23 Section 157. Section 733.806, Florida Statutes, is
24 amended to read:

25 733.806 Advancement.--If a person dies intestate ~~as to~~
26 ~~all his or her estate~~, property that the decedent gave during
27 ~~in his or her~~ lifetime to an heir is treated as an advancement
28 against the heir's ~~latter's~~ share of the estate only if
29 declared in a contemporaneous writing by the decedent or
30 acknowledged in writing by the heir. The property advanced
31 shall be valued at the time the heir came into possession or

1 enjoyment of the property or at the time of the death of the
2 decedent, whichever first occurs. If the recipient of the
3 property does not survive the decedent, the property shall not
4 be taken into account in computing the intestate share to be
5 received by the recipient's descendants unless the declaration
6 or acknowledgment provides otherwise.

7 Section 158. Subsections (3), (4), (5), and (6) of
8 section 733.808, Florida Statutes, are amended to read:

9 733.808 Death benefits; disposition of proceeds.--

10 (3) In the event no trustee makes proper claim to the
11 proceeds from the insurance company or other obligor within a
12 period of 6 months after the date of the death of the insured,
13 employee, or annuitant, or if satisfactory evidence is
14 furnished to the insurance company or ~~such~~ obligor within that
15 period that there is, or will be, no trustee to receive the
16 proceeds, payment shall be made by the insurance company or
17 obligor to the personal representative of the person making
18 the ~~such~~ designation, unless otherwise provided by agreement
19 with the insurer or ~~other~~ obligor during the lifetime of the
20 insured, employee, or annuitant.

21 (4) Death benefits payable as provided in subsection
22 (1), subsection (2), or subsection (3), unless paid to a
23 personal representative under the provisions of subsection
24 (3), shall not be deemed to be part of the decedent's estate
25 ~~of the testator or an intestate estate~~, and shall not be
26 subject to any obligation to pay the expenses of the
27 administration and obligations of the decedent's estate or for
28 contribution required from a trust under s. 733.607(2)
29 ~~transfer or estate taxes, debts, or other charges enforceable~~
30 ~~against the estate~~ to any greater extent than if the ~~such~~

31

1 proceeds were payable directly to the beneficiaries named in
2 the trust.

3 (5) The death benefits ~~so~~ held in trust may be
4 commingled with any other assets that may properly come into
5 the trust.

6 (6) Nothing in this section shall affect the validity
7 of any designation of a beneficiary of proceeds previously
8 ~~heretofore~~ made that designates as beneficiary the trustee of
9 any trust established under a trust agreement or declaration
10 of trust or by will.

11 Section 159. Section 733.809, Florida Statutes, is
12 amended to read:

13 733.809 Right of retainer.--The amount of a
14 noncontingent indebtedness due from ~~of~~ a beneficiary to the
15 estate, ~~if due,~~ or its present value, if not due, may be
16 offset against that ~~the~~ beneficiary's interest. However, that,
17 ~~but the~~ beneficiary shall have ~~has~~ the benefit of any defense
18 that would be available ~~to him or her~~ in a direct proceeding
19 for recovery of the debt.

20 Section 160. Section 733.810, Florida Statutes, is
21 amended to read:

22 733.810 Distribution in kind; valuation.--

23 (1) Assets shall be distributed in kind unless:

24 (a) A general power of sale is conferred;

25 (b) A contrary intention is indicated by the will or
26 trust; or

27 (c) Disposition is made otherwise under the provisions
28 of this code. ~~Unless a general power of sale is conferred or a~~
29 ~~contrary intention is indicated by the will or unless assets~~
30 ~~are otherwise disposed of under the provisions of this code,~~
31 ~~the distributable assets of a decedent's estate shall be~~

1 ~~distributed in kind through application of the following~~
2 ~~provisions:~~

3 (2)(a) Any pecuniary devise, family allowance, or
4 other pecuniary share of the estate or trust or devise payable
5 ~~in money~~ may be satisfied ~~by value~~ in kind if:

6 (a)1. The person entitled to ~~the~~ payment has not
7 demanded cash;

8 (b)2. The property is distributed ~~in kind is valued~~ at
9 fair market value as ~~of the date~~ of its distribution date; and

10 (c)3. No residuary devisee has requested that the
11 asset remain a part of the residuary ~~residue of the~~ estate.

12 (3)(b) When ~~it is~~ not practicable to distribute
13 undivided interests in a residuary asset ~~property~~, the asset
14 may ~~property shall~~ be sold ~~converted into cash for~~
15 ~~distribution.~~

16 (4)(2) When the ~~personal representative, trustee, or~~
17 ~~other~~ fiduciary under a will or trust ~~instrument~~ is required
18 ~~to~~, or has an option, to, ~~to~~ satisfy a pecuniary devise or
19 transfer in trust, to, or for the benefit of, ~~the~~ surviving
20 spouse, with an in-kind distribution ~~assets of the estate or~~
21 ~~trust in kind~~, at values as finally determined for federal
22 estate tax purposes, the ~~personal representative, trustee, or~~
23 ~~other~~ fiduciary shall, unless the governing will or trust
24 instrument otherwise provides, satisfy the devise or transfer
25 in trust by distribution of assets, including cash, fairly
26 representative of the appreciated or depreciated value of all
27 property available for that distribution ~~in satisfaction of~~
28 ~~the devise or transfer in trust~~, taking into consideration any
29 gains and losses realized from a prior ~~the~~ sale, ~~prior to~~
30 ~~distribution of the marital interest~~, of any property not
31 devised specifically, generally, or demonstratively ~~devised~~.

1 ~~(5)(3) With the consent of all beneficiaries affected,~~
2 A personal representative or a trustee is authorized to
3 distribute any distributable assets, non-pro rata among the
4 beneficiaries subject to the fiduciary's duty of impartiality
5 ~~entitled thereto.~~

6 Section 161. Section 733.811, Florida Statutes, is
7 amended to read:

8 733.811 Distribution; right or title of
9 distributee.--If a distributee receives from a fiduciary an
10 instrument transferring assets in kind, payment in
11 distribution, or possession of specific property, the
12 distributee has succeeded to the estate's interest in the
13 assets as against all persons interested in the estate.
14 However, the fiduciary may recover the assets or their value
15 if the distribution was improper ~~Proof that a distributee has~~
16 ~~received an instrument transferring assets in kind or payment~~
17 ~~in distribution or possession of specific property from a~~
18 ~~personal representative is conclusive evidence that the~~
19 ~~distributee has succeeded to the interest of the estate in the~~
20 ~~distributed assets, as against all persons interested in the~~
21 ~~estate, but the personal representative may recover the assets~~
22 ~~or their value if the distribution was improper.~~

23 Section 162. Section 733.812, Florida Statutes, is
24 amended to read:

25 733.812 Improper distribution or payment; liability of
26 distributee or payee.--~~Unless the distribution or payment no~~
27 ~~longer can be questioned because of adjudication, estoppel, or~~
28 ~~limitations, A distributee of property improperly distributed~~
29 ~~or paid or a claimant who was paid improperly must paid, if he~~
30 ~~or she has the property, is liable to return the assets or~~
31 ~~funds property improperly received, and the income from those~~

1 assets or interest on the funds ~~its income~~ since distribution
2 or payment, unless the distribution or payment cannot be
3 questioned because of adjudication, estoppel, or limitations
4 ~~to the personal representative or to the beneficiaries~~
5 ~~entitled to it.~~ If the distributee or claimant ~~he or she~~ does
6 not have the property, its ~~then he or she is liable to return~~
7 ~~the value of the property improperly received~~ at the date of
8 disposition, ~~and its income thereon,~~ and gain received by the
9 distributee or claimant must be returned ~~him or her.~~

10 Section 163. Section 733.813, Florida Statutes, is
11 amended to read:

12 733.813 Purchasers from distributees protected.--If
13 property distributed in kind, or a security interest in that
14 property therein, is acquired by a purchaser or lender for
15 value from a distributee ~~who has received an instrument of~~
16 ~~distribution or possession from the personal representative,~~
17 the purchaser or lender takes title free of any claims of the
18 estate and incurs no personal liability to the estate, whether
19 or not the distribution was proper. The ~~To be protected under~~
20 ~~this provision~~ a purchaser or lender need not inquire whether
21 a personal representative acted properly in making the
22 distribution in kind.

23 Section 164. Section 733.814, Florida Statutes, is
24 amended to read:

25 733.814 Partition for purpose of distribution.--When
26 two or more beneficiaries ~~heirs or devisees~~ are entitled to
27 distribution of undivided interests in any property, the
28 personal representative or any beneficiary ~~one or more of the~~
29 ~~beneficiaries~~ may petition the court before ~~closing~~ the estate
30 is closed to ~~make partition.~~ After formal notice to the
31 ~~interested beneficiaries,~~ the court shall partition the

1 property in the same manner as provided by law for civil
2 actions of partition. The court may direct the personal
3 representative to sell any property that cannot be partitioned
4 without prejudice to the owners and that cannot be allotted
5 equitably and conveniently ~~be allotted to any one party.~~

6 Section 165. Section 733.815, Florida Statutes, is
7 amended to read:

8 733.815 Private contracts ~~agreements~~ among interested
9 persons ~~distributees~~.--Subject to the rights of creditors and
10 taxing authorities, ~~competent~~ interested persons may agree
11 among themselves to alter the interests, shares, or amounts to
12 which they are entitled ~~under the will or under the laws of~~
13 ~~intestacy~~ in a written contract executed by them ~~all who are~~
14 ~~affected~~. The personal representative shall abide by the terms
15 of the contract ~~agreement~~, subject to the personal
16 representative's ~~his or her~~ obligation to administer the
17 estate for the benefit of interested persons who are not
18 parties to the contract, and ~~creditors~~, to pay ~~all taxes and~~
19 ~~costs of administration, and to carry out the responsibilities~~
20 ~~of his or her office for the benefit of any beneficiaries of~~
21 ~~the decedent who are not parties to the agreement. Personal~~
22 ~~representatives are not required to see to the performance of~~
23 ~~trusts if the trustee is another person who is willing to~~
24 ~~accept the trust~~. Trustees of a testamentary trust are
25 interested persons ~~beneficiaries~~ for the purposes of this
26 section. Nothing in this section ~~herein~~ relieves trustees of
27 any duties owed to beneficiaries of trusts.

28 Section 166. Section 733.816, Florida Statutes, is
29 amended to read:

30 733.816 Disposition of unclaimed property held by
31 personal representatives.--

1 (1) In all cases in which there is unclaimed property
2 in the hands of a personal representative that cannot be
3 distributed or paid because of the inability to find the
4 lawful owner ~~because of inability to find him or her~~ or
5 because no lawful owner is known or because the lawful owner
6 refuses to accept the property after a reasonable attempt to
7 distribute it and after notice to that lawful owner, the court
8 shall order the personal representative to sell the property
9 and deposit the proceeds and cash already in hand, after
10 retaining those amounts provided for in subsection (4), with
11 the clerk and receive a receipt, and the clerk shall deposit
12 the funds in the registry of the court to be disposed of as
13 follows:

14 (a) If the value of the funds is \$500 or less, the
15 clerk shall post a notice for 30 days at the courthouse door
16 giving the amount involved, the name of the personal
17 representative, and the other pertinent information that will
18 put interested persons on notice.

19 (b) If the value of the funds is over \$500, the clerk
20 shall publish the notice once a month for 2 consecutive months
21 in a newspaper of general circulation in the county.

22
23 After the expiration of 6 months from the posting or first
24 publication, the clerk shall deposit the funds with the State
25 Treasurer after deducting the clerk's ~~his or her~~ fees and the
26 costs of publication.

27 (2) Upon receipt of the funds, the State Treasurer
28 shall deposit them to the credit of the State School Fund, to
29 become a part of the school fund. All interest and all income
30 that may accrue from the money while so deposited shall belong
31 to the fund. The funds so deposited shall constitute and be a

1 permanent appropriation for payments by the State Treasurer in
2 obedience to court orders entered as provided by subsection
3 (3).

4 (3) Within 10 years from the date of deposit with the
5 State Treasurer, on written petition to the court that
6 directed the deposit of the funds and informal notice to the
7 Department of Legal Affairs, and after proof of entitlement
8 ~~his or her right to them~~, any person entitled to the funds
9 before or after payment to the State Treasurer and deposit as
10 provided by subsection (1) may obtain a court ~~an~~ order of
11 ~~court~~ directing the payment of the funds to that person ~~him or~~
12 ~~her~~. All funds deposited with the State Treasurer and not
13 claimed within 10 years from the date of deposit shall escheat
14 to the state for the benefit of the State School Fund.

15 (4) The personal representative depositing assets with
16 the clerk is permitted to retain from the funds ~~in his or her~~
17 ~~possession~~ a sufficient amount to pay final costs of
18 administration chargeable to the assets, ~~including fees~~
19 ~~allowed pursuant to s. 733.617~~ accruing between the deposit of
20 the funds with the clerk of the court and the order of
21 discharge. Any funds so retained which are surplus shall be
22 deposited with the clerk prior to discharge of the personal
23 representative.

24 (5)(a) If a person entitled to the funds assigns the
25 right ~~his or her rights~~ to receive payment or part payment to
26 an attorney or private investigative agency which is duly
27 licensed to do business in this state pursuant to a written
28 agreement with that ~~such~~ person, the Department of Banking and
29 Finance is authorized to make distribution in accordance with
30 the ~~such~~ assignment.

31

1 (b) Payments made to an attorney or private
2 investigative agency shall be promptly deposited into a trust
3 or escrow account which is regularly maintained by the
4 attorney or private investigative agency in a financial
5 institution located in this state and authorized to accept
6 these ~~such~~ deposits ~~and located in this state~~.

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

13 (d) The department shall not be civilly or criminally
14 liable for any funds distributed pursuant to this subsection,
15 provided the ~~such~~ distribution is made in good faith.

16 Section 167. Subsections (1) and (2), paragraph (a) of
17 subsection (4), paragraph (c) of subsection (5), subsection
18 (6), paragraph (a) of subsection (7), and subsection (11) of
19 section 733.817, Florida Statutes, are amended to read:

20 733.817 Apportionment of estate taxes.--

21 (1) For purposes of this section:

22 (a) "Fiduciary" means a person other than the personal
23 representative in possession of property included in the
24 measure of the tax who is liable to the applicable taxing
25 authority for payment of the entire tax to the extent of the
26 value of the property in ~~his or her~~ possession.

27 (b) "Governing instrument" means a will, trust
28 agreement, or any other document that controls the transfer of
29 an asset on the occurrence of the event with respect to which
30 the tax is being levied.

31

1 (c) "Gross estate" means the gross estate, as
2 determined by the Internal Revenue Code with respect to the
3 federal estate tax and the Florida estate tax, and as that
4 ~~such~~ concept is otherwise determined by the estate,
5 inheritance, or death tax laws of the particular state,
6 country, or political subdivision whose tax is being
7 apportioned.

8 (d) "Included in the measure of the tax" means that
9 for each separate tax that an interest may incur, only
10 interests included in the measure of that particular tax are
11 considered. The term "included in the measure of the tax" does
12 not include any interest, whether passing under the will or
13 not, to the extent the interest is initially deductible from
14 the gross estate, without regard to any subsequent reduction
15 ~~diminution~~ of the deduction by reason of the charge of any
16 part of the applicable tax to the interest. The term "included
17 in the measure of the tax" does not include interests or
18 amounts that are not included in the gross estate but are
19 included in the amount upon which the applicable tax is
20 computed, such as adjusted taxable gifts with respect to the
21 federal estate tax. If an election is required for
22 deductibility, an interest is not "initially deductible"
23 unless the election for deductibility is allowed.

24 (e) "Internal Revenue Code" means the Internal Revenue
25 Code of 1986, as amended from time to time.

26 (f) "Net tax" means the net tax payable to the
27 particular state, country, or political subdivision whose tax
28 is being apportioned, after taking into account all credits
29 against the applicable tax except as provided in this section.
30 With respect to the federal estate tax, "net tax" is

31

1 determined after taking into account all credits against the
2 tax except for the credit for foreign death taxes.

3 (g) "Nonresiduary devise" means any devise that is not
4 a residuary devise.

5 (h) "Nonresiduary interest" in connection with a trust
6 means any interest in a trust which is not a residuary
7 interest.

8 (i) "Recipient" means, with respect to property or an
9 interest in property included in the gross estate, an heir at
10 law in an intestate estate, devisee in a testate estate,
11 beneficiary of a trust, beneficiary of an insurance policy,
12 annuity, or other contractual right, surviving tenant, taker
13 as a result of the exercise or in default of the exercise of a
14 general power of appointment, person who receives or is to
15 receive the property or an interest in the property, or person
16 in possession of the property, other than a creditor.

17 (j) "Residuary devise" has the meaning set forth in s.
18 731.201(31)~~(30)~~.

19 (k) "Residuary interest," in connection with a trust,
20 means an interest in the assets of a trust which remain after
21 provision for any distribution that is to be satisfied by
22 reference to a specific property or type of property, fund,
23 sum, or statutory amount.

24 (l) "Revocable trust" means a trust as described in s.
25 733.707(3)~~as defined in s. 731.201(33)~~ ~~created by the~~
26 ~~decedent to the extent that the decedent had at his or her~~
27 ~~death the power to alter, amend, or revoke the trust either~~
28 ~~alone or in conjunction with any other person.~~

29 (m) "State" means any state, territory, or possession
30 of the United States, the District of Columbia, and the
31 Commonwealth of Puerto Rico.

1 (n) "Tax" means any estate tax, inheritance tax,
2 generation skipping transfer tax, or other tax levied or
3 assessed under the laws of this or any other state, the United
4 States, any other country, or any political subdivision of the
5 foregoing, as finally determined, which is imposed as a result
6 of the death of the decedent, including, without limitation,
7 the tax assessed pursuant to s. 4980A of the Internal Revenue
8 Code. The term also includes any interest and penalties
9 imposed in addition to the tax. Unless the context indicates
10 otherwise, the term "tax" means each separate tax.

11 (o) "Temporary interest" means an interest in income
12 or an estate for a specific period of time or for life or for
13 some other period controlled by reference to extrinsic events,
14 whether or not in trust.

15 (p) "Tentative Florida tax" with respect to any
16 property means the net Florida estate tax that would have been
17 attributable to that property if no tax were payable to any
18 other state in respect of that property.

19 (q) "Value" means the pecuniary worth of the interest
20 involved as finally determined for purposes of the applicable
21 tax after deducting any debt, expense, or other deduction
22 chargeable to it for which a deduction was allowed in
23 determining the amount of the applicable tax. A lien or other
24 encumbrance is not regarded as chargeable to a particular
25 interest to the extent that it will be paid from other
26 interests. The value of an interest shall not be reduced by
27 reason of the charge against it of any part of the tax.

28 (2) An interest in protected homestead ~~property~~ shall
29 be exempt from the apportionment of taxes ~~if such interest~~
30 ~~passes to a person to whom inures the decedent's exemption~~
31 ~~from forced sale under the State Constitution.~~

1 (4)(a) Except as otherwise effectively directed by the
2 governing instrument, if the Internal Revenue Code including,
3 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,
4 and 2603, ~~of the Internal Revenue Code~~ applies to apportion
5 federal tax against recipients of certain interests, all net
6 taxes, including taxes levied by the state attributable to
7 each type of interest, shall be apportioned against the
8 recipients of all interests of that type in the proportion
9 that the value of each interest of that type included in the
10 measure of the tax bears to the total of all interests of that
11 type included in the measure of the tax.

12 (5) Except as provided above or as otherwise directed
13 by the governing instrument, the net tax attributable to each
14 interest shall be apportioned as follows:

15 (c) The net tax attributable to an interest in
16 protected homestead ~~property which is exempt from~~
17 ~~apportionment pursuant to subsection (2)~~ shall be apportioned
18 against the recipients of other interests in the estate or
19 passing under any revocable trust in the following order:

20 1. Class I: Recipients of interests not disposed of
21 by the decedent's will or revocable trust that ~~which~~ are
22 included in the measure of the federal estate tax.

23 2. Class II: Recipients of residuary devises and
24 residuary interests that are included in the measure of the
25 federal estate tax.

26 3. Class III: Recipients of nonresiduary devises and
27 nonresiduary interests that are included in the measure of the
28 federal estate tax. The net tax apportioned to a class, if
29 any, pursuant to this paragraph shall be apportioned among the
30 recipients in the class in the proportion that the value of
31

1 the interest of each bears to the total value of all interests
2 included in that class.

3 (6) The personal representative or fiduciary shall not
4 be required to transfer to a recipient any property ~~in~~
5 ~~possession of the personal representative or fiduciary which~~
6 ~~he or she~~ reasonably anticipated to ~~anticipates~~ may be
7 necessary for the payment of taxes. Further, the personal
8 representative or fiduciary shall not be required to transfer
9 any property ~~in possession of the personal representative or~~
10 ~~fiduciary~~ to the recipient until the amount of the tax due
11 from the recipient is paid by the recipient. If property is
12 transferred before final apportionment of the tax, the
13 recipient shall provide a bond or other security for his or
14 her apportioned liability in the amount and form prescribed by
15 the personal representative or fiduciary.

16 (7)(a) The personal representative may petition at any
17 time for an order of apportionment. If no administration has
18 been commenced at any time after 90 days from the decedent's
19 death any fiduciary may petition for an order of apportionment
20 in the court in which venue would be proper for administration
21 of the decedent's estate. Formal notice of the petition for
22 order of apportionment shall be given to all interested
23 persons. At any time after 6 months from the decedent's death,
24 any recipient may petition the ~~such~~ court for an order of
25 apportionment.

26 (11) Nothing in this section shall limit the right of
27 any person who has paid more than the amount of the tax
28 apportionable to that ~~such~~ person, calculated as if all
29 apportioned amounts would be collected, to obtain contribution
30 from those who have not paid the full amount of the tax
31 apportionable to them, calculated as if all apportioned

1 amounts would be collected, and that right is hereby
2 conferred. In any action to enforce contribution, the court
3 shall award taxable costs as in chancery actions, including
4 reasonable attorney's fees.

5 Section 168. Section 733.901, Florida Statutes, is
6 amended to read:

7 733.901 ~~Distribution~~Final discharge.--

8 (1) After administration has been ~~When a personal~~
9 ~~representative has~~ completed the personal representative shall
10 be discharged ~~administration except for distribution, he or~~
11 ~~she shall file a final accounting and a petition for discharge~~
12 ~~that shall contain:~~

13 (a) ~~A complete report of all receipts and~~
14 ~~disbursements since the date of the last annual accounting or,~~
15 ~~if none, from the commencement of administration.~~

16 (b) ~~A statement that he or she has fully administered~~
17 ~~the estate by making payment, settlement, or other disposition~~
18 ~~of all claims and debts that were presented and the expenses~~
19 ~~of administration.~~

20 (c) ~~The proposed distribution of the assets of the~~
21 ~~estate.~~

22 (d) ~~Any prior distributions that have been made.~~

23 (e) ~~A statement that objections to this report or~~
24 ~~proposed distribution of assets be filed within 30 days.~~

25
26 ~~The final accounting and petition for discharge shall be filed~~
27 ~~and served on all interested persons within 12 months after~~
28 ~~issuance of letters for estates not required to file a federal~~
29 ~~estate tax return, otherwise 12 months from the date the~~
30 ~~return is due, unless the time is extended by the court for~~
31 ~~cause shown after notice to interested persons. The petition~~

1 ~~shall state the status of the estate and the reasons for the~~
2 ~~extension.~~

3 ~~(2) If no objection to the accounting or petition for~~
4 ~~discharge has been filed within 30 days from the date of~~
5 ~~service of copies on interested persons, or if service has~~
6 ~~been waived, the personal representative may distribute the~~
7 ~~estate according to the plan of distribution set forth in the~~
8 ~~petition without a court order. The assets shall be~~
9 ~~distributed free from the claims of any interested person and,~~
10 ~~upon receipt of evidence that the estate has been properly~~
11 ~~distributed and that claims of creditors have been paid or~~
12 ~~otherwise disposed of, the court shall enter an order~~
13 ~~discharging the personal representative and releasing the~~
14 ~~surety on any bond.~~

15 ~~(3) If an objection to the petition for discharge has~~
16 ~~been filed within the time allowed, the court shall determine~~
17 ~~the plan of distribution and, upon receipt of evidence that~~
18 ~~the estate has been properly distributed and that claims of~~
19 ~~creditors have been paid or otherwise disposed of, the court~~
20 ~~shall enter an order discharging the personal representative~~
21 ~~and releasing the surety on any bond.~~

22 ~~(4) The final accounting required under subsection (1)~~
23 ~~may be waived upon a filing of a consent waiver with the~~
24 ~~court, by all interested persons, acknowledging that they are~~
25 ~~aware of their rights and that they waive the right to have a~~
26 ~~final accounting.~~

27 ~~(5) The 30-day period contained in subsection (2) may~~
28 ~~be waived upon written consent of all interested persons.~~

29 (2)(6) The discharge of the personal representative
30 shall release the personal representative of the estate and

31

1 shall bar any action against the personal representative, as
2 such or individually, and the ~~his or her~~ surety.

3 Section 169. Section 733.903, Florida Statutes, is
4 amended to read:

5 733.903 Subsequent administration.--The final
6 settlement of an estate and the discharge of the personal
7 representative shall not prevent ~~a revocation of the order of~~
8 ~~discharge or the subsequent issuance of letters if other~~
9 ~~property of the estate is discovered or if it becomes~~
10 ~~necessary that further administration of the estate be had for~~
11 ~~any cause. However,~~The order of discharge may not be revoked
12 ~~under this section~~ based upon the discovery of a will or later
13 will.

14 Section 170. Subsections (3) and (4) of section
15 734.101, Florida Statutes, are amended to read:

16 734.101 Foreign personal representative.--

17 (3) Debtors who have not received a written demand for
18 payment from a personal representative or curator appointed in
19 this state within 60 days after appointment of a personal
20 representative in any other state or country, and whose
21 property in Florida is subject to a mortgage or other lien
22 securing the debt held by the foreign personal representative,
23 may pay the foreign personal representative after the
24 expiration of 60 days from the date of ~~his or her~~ appointment
25 of the foreign personnel representative. Thereafter, a
26 satisfaction of the mortgage or lien executed by the foreign
27 personal representative, with an authenticated copy of the ~~his~~
28 ~~or her~~ letters or other evidence of authority attached, may be
29 recorded in the public records. The satisfaction shall be an
30 effective discharge of the mortgage or lien, irrespective of
31

1 whether the debtor making payment had received a written
2 demand before paying the debt.

3 (4) All persons indebted to the estate of a decedent,
4 or having possession of personal property belonging to the
5 estate, who have received no written demand from a personal
6 representative or curator appointed in this state for payment
7 of the debt or the delivery of the property are authorized to
8 pay the debt or to deliver the personal property to the
9 foreign personal representative after the expiration of 60
10 days from the date of ~~his or her~~ appointment of the foreign
11 personnel representative.

12 Section 171. Section 734.102, Florida Statutes, is
13 amended to read:

14 734.102 Ancillary administration.--

15 (1) If a nonresident of this state dies leaving assets
16 in this state, credits due ~~him or her~~ from residents in this
17 state, or liens on property in this state, a personal
18 representative specifically designated in the decedent's will
19 to administer the Florida property shall be entitled to have
20 ancillary letters issued ~~to him or her~~, if qualified to act in
21 Florida. Otherwise, the foreign personal representative of the
22 decedent's estate shall be entitled to have letters issued ~~to~~
23 ~~him or her~~, if qualified to act in Florida. If the foreign
24 personal representative is not qualified to act in Florida and
25 the will names an alternate or successor who is qualified to
26 act in Florida, the alternate or successor shall be entitled
27 to have letters issued ~~to him or her~~. Otherwise, those
28 entitled to a majority interest of the Florida property may
29 have letters issued to a personal representative selected by
30 them who is qualified to act in Florida. If the decedent dies
31 intestate and the foreign ~~domiciliary~~ personal representative

1 is not qualified to act in Florida, the order of preference
2 for appointment of a personal representative as prescribed in
3 this code shall apply. If ancillary letters are applied for
4 by other than the domiciliary personal representative, prior
5 notice shall be given to any domiciliary personal
6 representative.

7 (2) Ancillary administration shall be commenced as
8 provided by the Florida Probate Rules. ~~To entitle the~~
9 ~~applicant to ancillary letters, an authenticated copy of so~~
10 ~~much of the domiciliary proceedings shall be filed as will~~
11 ~~show either:~~

12 (a) ~~The will, petition for probate, order admitting~~
13 ~~the will to probate, and letters, if there are such; or~~

14 (b) ~~The petition for letters and the letters.~~

15 (3) ~~On filing the authenticated copy of a probated~~
16 ~~will, including any probated codicils, the court shall~~
17 ~~determine~~ If the will and any the codicils, are executed as
18 required by the code, they shall be admitted to probate if
19 any, comply with s. 732.502(1) or s. 732.502(2). ~~If they~~
20 ~~comply, the court shall admit the will and any codicils to~~
21 ~~record.~~

22 (4) The ancillary personal representative shall give
23 bond as do personal representatives generally. All
24 proceedings for appointment and administration of the estate
25 shall be as similar to those in original administrations as
26 possible.

27 (5) Unless creditors' claims are otherwise barred by
28 s. 733.710, the ancillary personal representative shall cause
29 a notice to creditors to be served and published according to
30 the requirements of chapter 733. Claims not filed in

31

1 accordance with chapter 733 shall be barred as provided in s.
2 733.702.

3 ~~(6)~~(5) After the payment of all expenses of
4 administration and claims against the estate, the court may
5 order the remaining property held by the ancillary personal
6 representative transferred to the foreign domiciliary personal
7 representative or distributed to the beneficiaries ~~heirs or~~
8 ~~devisees~~.

9 ~~(7)~~(6) Ancillary personal representatives shall have
10 the same rights, powers, and authority as other personal
11 representatives in Florida to manage and settle estates; to
12 sell, lease, or mortgage local property; and to raise funds
13 for the payment of debts, claims, and devises in the
14 domiciliary jurisdiction. No property shall be sold, leased,
15 or mortgaged to pay a debt or claim that is barred by any
16 statute of limitation or of nonclaim of this state.

17 Section 172. Section 734.1025, Florida Statutes, is
18 amended to read:

19 734.1025 Nonresident decedent's testate estate with
20 property not exceeding ~~\$50,000~~\$25,000 in this state;
21 determination of claims.--

22 (1) When a nonresident decedent dies testate and
23 leaves property subject to administration in this state the
24 gross value of which does not exceed \$50,000 at the date of
25 death~~\$25,000~~, the foreign domiciliary personal representative
26 of the estate ~~may determine the question of claims in this~~
27 ~~state~~ before the expiration of 2 years after the decedent's
28 death may file the 2-year period provided in s. 733.710 by
29 filing in the circuit court of the county where any property
30 is located an authenticated transcript of so much of the
31 foreign domiciliary proceedings as will show the will and

1 beneficiaries of the estate, as provided in the Florida
2 Probate Rules. The court shall admit the will and any codicils
3 to probate if they comply with s. 732.502(1) or (2).+

4 ~~(a) In a testate estate, the probated will and all~~
5 ~~probated codicils of the decedent; the order admitting them to~~
6 ~~record; the letters or their equivalent; and the part of the~~
7 ~~record showing the names of the devisees and heirs of the~~
8 ~~decedent or an affidavit of the domiciliary personal~~
9 ~~representative reciting that the names are not shown or not~~
10 ~~fully disclosed by the domiciliary record and specifying the~~
11 ~~names. On presentation of the foregoing, the court shall~~
12 ~~admit the will and any codicils to probate if they comply with~~
13 ~~s. 732.502(1) or (2).~~

14 ~~(b) In an intestate estate, the authenticated copy of~~
15 ~~letters of administration, or their equivalent, with the part~~
16 ~~of the record showing the names of the heirs of the decedent~~
17 ~~or an affidavit of the domiciliary personal representative~~
18 ~~supplying the names, as provided in paragraph (a). On~~
19 ~~presentation of the foregoing, the court shall order them~~
20 ~~recorded.~~

21 ~~(2) After complying with the foregoing requirements,~~
22 The foreign domiciliary personal representative may shall
23 cause a notice to creditors to be served and published
24 according to the revelant requirements of chapter 733 s.
25 ~~731.111~~, notifying all persons having claims or demands
26 against the estate to file them. Claims not filed in
27 accordance with chapter 733 shall be barred as provided in s.
28 ~~733.702~~. If any claim is filed, a personal representative
29 shall be appointed as provided in the Florida Probate Rules.

30
31

1 ~~(3) The procedure for filing claims and objection to~~
2 ~~them and for suing on them shall be the same as for other~~
3 ~~estates, except as hereinafter provided.~~

4 ~~(4) If no claims are filed against the estate within~~
5 ~~the time allowed, the court shall enter an order adjudging~~
6 ~~that notice to creditors has been duly given and proof thereof~~
7 ~~filed and that no claims have been filed against the estate or~~
8 ~~that all claims have been satisfied.~~

9 ~~(5) If any claim is filed against the estate within~~
10 ~~the time allowed, the court shall send to the domiciliary~~
11 ~~personal representative a copy of the claim and a notice~~
12 ~~setting a date for a hearing to appoint an ancillary personal~~
13 ~~representative. At the hearing, the court shall appoint an~~
14 ~~ancillary personal representative according to the preferences~~
15 ~~as provided in s. 733.301.~~

16 ~~(6) If an ancillary personal representative is~~
17 ~~appointed pursuant to subsection (5), the procedure for~~
18 ~~filing, objecting to, and suing on claims shall be the same as~~
19 ~~for other estates, except that the ancillary personal~~
20 ~~representative appointed shall have not fewer than 30 days~~
21 ~~from the date of his or her appointment within which to object~~
22 ~~to any claim filed.~~

23 ~~(7) The filing by domiciliary personal representatives~~
24 ~~of portions of the domiciliary probate proceedings as~~
25 ~~specified in this section, and the barring of claims of~~
26 ~~creditors in such estates by the publication of notice to~~
27 ~~creditors as set forth in this section, in all cases prior to~~
28 ~~June 25, 1980, are hereby validated and confirmed.~~

29 Section 173. Paragraph (a) of subsection (1) and
30 subsection (3) of section 734.104, Florida Statutes, are
31 amended to read:

1 734.104 Foreign wills; admission to record; effect on
2 title.--

3 (1) An authenticated copy of the will of a nonresident
4 that devises real property in this state, or any right, title,
5 or interest in the property, may be admitted to record in any
6 county of this state where the property is located at any time
7 after 2 years from the death of the decedent or at any time
8 after the domiciliary personal representative has been
9 discharged if there has been no proceeding to administer the
10 estate of the decedent in this state, provided:

11 (a) The will was executed as required by Chapter 732
12 ~~complies with s. 732.502 as to form and manner of execution;~~
13 and

14 (3) If the court finds that the requirements of this
15 section have been met ~~has been complied with~~, it shall enter
16 an order admitting the foreign will to record.

17 Section 174. Section 734.201, Florida Statutes, is
18 amended to read:

19 734.201 Jurisdiction by act of foreign personal
20 representative.--A foreign personal representative submits
21 personally to the jurisdiction of the courts of this state in
22 any proceeding concerning the estate by:

23 (1) Filing authenticated copies of the domiciliary
24 proceedings under s. 734.104; ~~734.103~~.

25 (2) Receiving payment of money or taking delivery of
26 personal property, under s. 734.101; ~~or~~.

27 (3) Doing any act as a personal representative in this
28 state that would have given the state jurisdiction over that
29 person ~~him or her~~ as an individual.

30 Section 175. Section 734.202, Florida Statutes, is
31 amended to read:

1 734.202 Jurisdiction by act of decedent.--In addition
2 to jurisdiction conferred by s. 734.201, a foreign personal
3 representative is subject to the jurisdiction of the courts of
4 this state to the same extent that the ~~his or her~~ decedent was
5 subject to jurisdiction immediately before death.

6 Section 176. Section 735.101, Florida Statutes, is
7 repealed:

8 ~~735.101 Family administration; nature of~~
9 ~~proceedings.--Family administration may be had in the~~
10 ~~administration of a decedent's estate when it appears:~~

11 ~~(1) In an intestate estate, that the heirs at law of~~
12 ~~the decedent consist solely of a surviving spouse, lineal~~
13 ~~descendants, and lineal ascendants, or any of them.~~

14 ~~(2) In a testate estate, that the beneficiaries under~~
15 ~~the will consist of a surviving spouse, lineal descendants,~~
16 ~~and lineal ascendants, or any of them, and that any specific~~
17 ~~or general devise to others constitutes a minor part of the~~
18 ~~decedent's estate.~~

19 ~~(3) In a testate estate, that the decedent's will does~~
20 ~~not direct administration as required by chapter 733.~~

21 ~~(4) That the value of the gross estate, as of the date~~
22 ~~of death, for federal estate tax purposes is less than~~
23 ~~\$60,000.~~

24 ~~(5) That the entire estate consists of personal~~
25 ~~property or, if real property forms part of the estate, that~~
26 ~~administration under chapter 733 has proceeded to the point~~
27 ~~that all claims of creditors have been processed or barred.~~

28 Section 177. Section 735.103, Florida Statutes, is
29 repealed:

30 ~~735.103 Petition for family administration.--A~~
31 ~~verified petition for family administration shall contain, in~~

1 ~~addition to the statements required by s. 733.202, the~~
2 ~~following:~~

3 ~~(1) Facts showing that petitioners are entitled to~~
4 ~~family administration, as provided in s. 735.101.~~

5 ~~(2) A complete list of the assets of the gross estate~~
6 ~~for federal estate tax purposes and their estimated value.~~

7 ~~(3) An appropriate statement that the estate is not~~
8 ~~indebted or that provision for payment of debts has been made~~
9 ~~or the claims are barred.~~

10 ~~(4) A proposed schedule of distribution of all assets~~
11 ~~to those entitled thereto as surviving spouse, heirs,~~
12 ~~beneficiaries, or creditors.~~

13
14 ~~The petition shall be signed and verified by all beneficiaries~~
15 ~~and the surviving spouse, if any. The petition may be signed~~
16 ~~on behalf of a minor or an incompetent by her or his legal~~
17 ~~guardian or, if none, by her or his natural guardian.~~

18 Section 178. Section 735.107, Florida Statutes, is
19 repealed:

20 ~~735.107 Family administration distribution.--~~

21 ~~(1) Upon filing the petition for family~~
22 ~~administration, the will, if any, shall be proved in~~
23 ~~accordance with chapter 733 and be admitted to probate.~~

24 ~~(2) If the estate consists of personal property only,~~
25 ~~then, after such hearing as the court may require, an order of~~
26 ~~family administration may be entered allowing immediate~~
27 ~~distribution of the assets to the persons entitled to them.~~

28 ~~(3) The order of family administration and the~~
29 ~~distribution so entered shall have the following effect:~~

30 ~~(a) Those to whom specified parts of the decedent's~~
31 ~~estate are assigned by the order shall be entitled to receive~~

1 ~~and collect the parts and to have the parts transferred to~~
2 ~~them. They may maintain actions to enforce the right.~~

3 ~~(b) Debtors of the decedent, those holding property of~~
4 ~~the decedent, and those with whom securities or other property~~
5 ~~of the decedent are registered are authorized and empowered to~~
6 ~~comply with the order by paying, delivering, or transferring~~
7 ~~to those specified in the order the parts of the decedent's~~
8 ~~estate assigned to them by the order, and the persons so~~
9 ~~paying, delivering, or transferring shall not be accountable~~
10 ~~to anyone else for the property.~~

11 ~~(c) After the entry of the order, bona fide purchasers~~
12 ~~for value from those to whom property of the decedent may be~~
13 ~~assigned by the order shall take the property free of all~~
14 ~~claims of creditors of the decedent and all rights of the~~
15 ~~surviving spouse and all other heirs and devisees.~~

16 ~~(d) Property of the decedent that is not exempt from~~
17 ~~claims of creditors and that remains in the hands of those to~~
18 ~~whom it may be assigned by the order shall continue to be~~
19 ~~liable for claims against the decedent until barred as~~
20 ~~provided in this law.~~

21 ~~(e) The petitioners for the order of family~~
22 ~~administration shall be personally liable for all lawful~~
23 ~~claims against the estate of the decedent, but only to the~~
24 ~~extent of the value of the estate of the decedent actually~~
25 ~~received by each petitioner, exclusive of the property exempt~~
26 ~~from claims of creditors under the constitution and statutes~~
27 ~~of Florida.~~

28 ~~(f) After 2 years from the death of the decedent,~~
29 ~~neither her nor his estate nor those to whom it may be~~
30 ~~assigned shall be liable for any claim against the decedent,~~

31

1 ~~unless proceedings have been taken for the enforcement of the~~
2 ~~claim.~~

3 ~~(g) Any heir or devisee of the decedent who was~~
4 ~~lawfully entitled to share in the estate but was not included~~
5 ~~in the order of family administration and distribution may~~
6 ~~enforce her or his rights against those who procured the order~~
7 ~~in appropriate proceedings and, when successful, shall be~~
8 ~~awarded reasonable attorney's fees as an element of costs.~~

9 ~~(4)(a) If the estate of the decedent includes real~~
10 ~~property and administration under chapter 733 has proceeded to~~
11 ~~the point that all claims of creditors have been processed or~~
12 ~~barred, or upon the satisfaction of all claims of creditors,~~
13 ~~if any, and after such hearing as the court may require, an~~
14 ~~order of family administration may be entered and the personal~~
15 ~~representative authorized to make distribution of the assets~~
16 ~~to the persons entitled to them. Upon evidence satisfactory~~
17 ~~to the court that distribution has been made, the court shall~~
18 ~~enter an order discharging the personal representative.~~

19 ~~(b) Any heir or devisee of the decedent who was~~
20 ~~lawfully entitled to share in the estate but who was not~~
21 ~~included in the order of family administration and~~
22 ~~distribution may enforce her or his rights against those who~~
23 ~~procured the order in appropriate proceedings and, when~~
24 ~~successful, shall be awarded reasonable attorney's fees as an~~
25 ~~element of costs.~~

26 Section 179. Subsection (2) of section 735.201,
27 Florida Statutes, is amended to read:

28 735.201 Summary administration; nature of
29 proceedings.--Summary administration may be had in the
30 administration of either a resident or nonresident decedent's
31 estate, when it appears:

1 (2) That the value of the entire estate subject to
2 administration in this state, less the value of property
3 exempt from the claims of creditors, does not exceed \$75,000
4 ~~\$25,000~~ or that the decedent has been dead for more than 2
5 years.

6 Section 180. Section 735.203, Florida Statutes, is
7 amended to read:

8 735.203 Petition for summary administration.--

9 (1) A petition for summary administration may be filed
10 by any beneficiary, ~~heir at law~~, or person nominated as
11 personal representative in the decedent's will offered for
12 probate, ~~and shall be signed and verified by:~~ The petition
13 must be signed and verified by

14 ~~(a) the surviving spouse, if any and any;~~ the heirs at
15 law or beneficiaries.

16 (2) If a person named in subsection (1) has died, is
17 incapacitated, or is a minor, or has conveyed or transferred
18 all interest in the property of the estate, then, as to that
19 person, the petition must be signed and certified by:

20 (a) The personal representative, if any, of a deceased
21 person or, if none, the surviving spouse, if any, and the
22 beneficiaries;

23 (b) The guardian of an incapacitated person or a
24 minor; or

25 (c) The grantee or transferee of any of them shall be
26 authorized to sign and verify the petition instead of the
27 beneficiary or surviving spouse.

28 (3) The joinder in, or consent to, a petition for
29 summary administration is not required of a beneficiary who
30 will receive full distributive share under the proposed
31 distribution. Any beneficiary not joining or consenting shall

1 receive formal notice of the petition. ~~who are sui juris; and~~
2 ~~the guardians of any heirs at law or beneficiaries who are not~~
3 ~~sui juris; or~~

4 ~~(b) The persons described by s. 735.209.~~

5 ~~(2) A petition for summary administration shall~~
6 ~~contain, in addition to the statements required by s.~~
7 ~~733.202(2)(b) and (c), the following:~~

8 ~~(a) Facts showing that petitioners are entitled to~~
9 ~~summary administration as provided in s. 735.201.~~

10 ~~(b) A complete list of the assets of the estate and~~
11 ~~their estimated value, together with those assets claimed to~~
12 ~~be exempt.~~

13 ~~(c) A statement that the estate is not indebted or~~
14 ~~that provision for payment of debts has been made.~~

15 ~~(d) A proposed schedule of distribution of all assets~~
16 ~~to those entitled thereto as surviving spouse, beneficiaries,~~
17 ~~or creditors.~~

18 Section 181. Section 735.206, Florida Statutes, is
19 amended to read:

20 735.206 Summary administration distribution.--

21 (1) Upon the filing of the petition for summary
22 administration, the will, if any, shall be proved in
23 accordance with chapter 733 and be admitted to probate.

24 (2) Prior to entry of the order of summary
25 administration, the petitioner shall make a diligent search
26 and reasonable inquiry for any known or reasonably
27 ascertainable creditors, serve a copy of the petition on those
28 creditors, and make provision for payment for those creditors
29 to the extent that assets are available.

30 (3)~~(2)~~ The court may enter ~~After such hearing as the~~
31 ~~court may require,~~ an order of summary administration ~~may be~~

1 ~~entered~~ allowing immediate distribution of the assets to the
2 persons entitled to them.

3 (4)~~(3)~~ The order of summary administration and
4 distribution so entered shall have the following effect:

5 (a) Those to whom specified parts of the decedent's
6 estate, including exempt property, are assigned by the order
7 shall be entitled to receive and collect the parts and to have
8 the parts transferred to them. They may maintain actions to
9 enforce the right.

10 (b) Debtors of the decedent, those holding property of
11 the decedent, and those with whom securities or other property
12 of the decedent are registered are authorized and empowered to
13 comply with the order by paying, delivering, or transferring
14 to those specified in the order the parts of the decedent's
15 estate assigned to them by the order, and the persons so
16 paying, delivering, or transferring shall not be accountable
17 to anyone else for the property.

18 (c) After the entry of the order, bona fide purchasers
19 for value from those to whom property of the decedent may be
20 assigned by the order shall take the property free of all
21 claims of creditors of the decedent and all rights of the
22 surviving spouse and all other beneficiaries ~~heirs and~~
23 ~~devisees~~.

24 (d) Property of the decedent that is not exempt from
25 claims of creditors and that remains in the hands of those to
26 whom it may be assigned by the order shall continue to be
27 liable for claims against the decedent until barred as
28 provided in the code this law. Any known or reasonably
29 ascertainable creditor who did not receive notice and for whom
30 provision for payment was not made may enforce the claim and,
31 if the creditor prevails, shall be awarded reasonable

1 attorneys fees as an element of costs against those who joined
2 in the petition.

3 (e) The recipients of the decedent's property under
4 ~~petitioners for~~ the order of summary administration shall be
5 personally liable for a pro rata share of all lawful claims
6 against the estate of the decedent, but only to the extent of
7 the value of the estate of the decedent actually received by
8 each recipient ~~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 the decedent's 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 who was not
18 included in the order of summary administration and
19 distribution may enforce all ~~his or her~~ rights in appropriate
20 proceedings against those who procured the order and, if ~~when~~
21 successful, shall be awarded reasonable attorney's fees as an
22 element of costs.

23 Section 182. Section 735.2063, Florida Statutes, is
24 amended to read:

25 735.2063 Notice to creditors.--

26 (1) Any person who has obtained ~~received~~ an order of
27 summary administration may publish a notice to creditors
28 according to the relevant requirements of s. 733.2121 ~~731.111~~,
29 notifying all persons having claims or demands against the
30 estate of the decedent that an order of summary administration
31 has been entered by the court. The ~~Such~~ notice shall ~~will~~

1 specify the total ~~cash~~ value of the estate and the names and
2 addresses of those to whom it has been assigned by the such
3 order. ~~Such notice, if published, shall be published once a~~
4 ~~week for 2 consecutive weeks in a newspaper published in the~~
5 ~~county where such order was entered, and proof of publication~~
6 ~~of such notice shall be filed with the court.~~

7 (2) If proof of publication of the such notice is
8 filed with the court, all claims and demands of creditors
9 against the estate of the decedent who are not known or are
10 reasonably ascertainable shall be forever barred unless the
11 such claims and demands are filed with the court within 3
12 months after ~~from~~ the first publication of the such notice.

13 Section 183. Section 735.209, Florida Statutes, is
14 repealed:

15 ~~735.209 Joinder of heirs, devisees, or surviving~~
16 ~~spouse in summary administration.--~~

17 ~~(1) When any heir, devisee, or surviving spouse is~~
18 ~~authorized or required under this part to join in any~~
19 ~~agreement or petition and any such person has died, become~~
20 ~~incompetent or is a minor, or has conveyed or transferred all~~
21 ~~of his or her interest in the property of the estate, then:~~

22 ~~(a) The heirs, devisees, and surviving spouse, if any,~~
23 ~~of a deceased person,~~

24 ~~(b) The personal representative, if any, of the estate~~
25 ~~of a deceased person,~~

26 ~~(c) The guardian of an incompetent or minor, or~~

27 ~~(d) The grantee or transferee of any of them~~

28
29 ~~shall be authorized to join in such agreement or petition~~
30 ~~instead of the heir, devisee, or surviving spouse.~~

31

1 ~~(2) The joinder in, or consent to, a petition for~~
2 ~~summary administration is not required of an heir or~~
3 ~~beneficiary who will receive his or her full distributive~~
4 ~~share under the proposed distribution. Any beneficiary not~~
5 ~~joining or consenting shall receive formal notice of the~~
6 ~~petition.~~

7 Section 184. Subsection (3) of section 735.301,
8 Florida Statutes, is amended to read:

9 735.301 Disposition without administration.--

10 (3) Any person, firm, or corporation paying,
11 delivering, or transferring property under the authorization
12 shall be forever discharged from ~~any~~ liability thereon.

13 Section 185. Section 735.302, Florida Statutes, is
14 amended to read:

15 735.302 Income tax refunds in certain cases.--

16 (1) In any case when the United States Treasury
17 Department determines that an overpayment of federal income
18 tax exists and the person in whose favor the overpayment is
19 determined is dead at the time the overpayment of tax is to be
20 refunded, and irrespective of whether the decedent had filed a
21 joint and several or separate income tax return, the amount of
22 the overpayment, if not in excess of \$2,500~~\$500~~, may be
23 refunded as follows:

24 (a) Directly to the surviving spouse on his or her
25 verified application; or

26 (b) If there is no surviving spouse, to one of the
27 decedent's children who is designated in a verified
28 application purporting to be executed by all of the decedent's
29 children over the age of 14 years.

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1 In either event, the application must show that the decedent
2 was not indebted, that provision has been made for the payment
3 of the decedent's debts, or that the entire estate is exempt
4 from the claims of creditors under the constitution and
5 statutes of the state, and that no administration of the
6 estate, including summary administration, has been initiated
7 and that none is planned, to the knowledge of the applicant.

8 (2) If a refund is made to the surviving spouse or
9 designated child pursuant to the application, the refund shall
10 operate as a complete discharge to the United States from
11 liability from any action, claim, or demand by any beneficiary
12 of the decedent or other person. ~~Nothing in~~ This section
13 shall be construed as establishing the ownership or rights of
14 the payee any person in the refund ~~so distributed~~.

15 Section 186. Section 737.208, Florida Statutes, is
16 created to read:

17 737.208 Administration pending outcome of contest or
18 other proceeding.--

19 (1) Pending the outcome of a proceeding filed to
20 determine the validity of all or part of a trust or the
21 beneficiaries of all or part of a trust, the trustee shall
22 proceed with the administration of the trust as if no
23 proceeding had been commenced, except that no distribution may
24 be made to a beneficiary in contravention of the rights of
25 those persons that may be affected by the outcome of the
26 proceeding.

27 (2) Upon motion of a party and after notice to
28 interested persons, a court may, upon good cause shown, make
29 an exception to the prohibition under subsection (1) and
30 authorize the trustee to distribute trust assets to a
31 beneficiary subject to any conditions the court, in its

1 discretion, may impose, including the posting of bond by the
2 beneficiary.

3 Section 187. Section 737.3054, Florida Statutes, is
4 amended to read:

5 737.3054 Trustee's duty to pay expenses and
6 obligations of grantor's ~~settlor's~~ estate.--

7 (1) A trustee of a trust described in s. 733.707(3)
8 shall pay to the personal representative of a grantor's
9 ~~settlor's~~ estate any amounts that the personal representative
10 certifies in writing to the trustee are required to pay the
11 expenses of the administration and obligations of the
12 grantor's ~~settlor's~~ estate ~~and the enforceable claims of the~~
13 ~~settlor's creditors~~. Payments made by a trustee, unless
14 otherwise provided in the trust instrument, must be charged as
15 expenses of the trust without a contribution from anyone. The
16 interests ~~interest~~ of all beneficiaries of such a trust are
17 subject to the provisions of this subsection; however, the
18 payments must be made from assets or property or the proceeds
19 thereof, other than assets proscribed in s. 733.707(3), which
20 are included in the grantor's ~~settlor's~~ gross estate for
21 federal estate tax purposes.

22 (2) Unless a grantor ~~settlor~~ provides by will, or
23 designates in a trust described in s. 733.707(3) ~~the funds or~~
24 property passing under the ~~a trust described in s. 733.707(3)~~
25 to be so used, the expenses of the administration and
26 obligations of the grantor's ~~settlor's~~ estate ~~and enforceable~~
27 ~~claims of the settlor's creditors~~ must be paid from the trust
28 in the following order:

29 (a) Property of the residue of the trust remaining
30 after all distributions that are to be satisfied by reference
31 to a specific property or type of property, fund, or sum;

1 (b) Property that is not to be distributed from
2 specified or identified property or a specified or identified
3 item of property; and

4 (c) Property that is to be distributed from specified
5 or identified property or a specified or identified item of
6 property.

7 (3) Trust distributions that are to be satisfied from
8 specified or identified property must be classed as
9 distributions to be satisfied from the general assets of the
10 trust and not otherwise disposed of in the trust instrument
11 upon the failure or insufficiency of funds or property from
12 which payment should be made, to the extent of the
13 insufficiency. Trust distributions given for valuable
14 consideration abate with other distributions of the same class
15 only to the extent of the excess over the value of the
16 consideration until all others of the same class are
17 exhausted. Except as provided in this section, trust
18 distributions abate equally and ratably and without preference
19 or priority between real and personal property. When a
20 specified or identified item of property that has been
21 designated for distribution in the trust instrument or that is
22 charged with a distribution is sold or taken by the trustee,
23 other beneficiaries shall contribute according to their
24 respective interests to the beneficiary whose property has
25 been sold or taken, and before distribution the trustee shall
26 determine the amounts of the respective contributions, and
27 they must be paid or withheld before distribution is made.

28 (4) The trustee shall pay the expenses of trust
29 administration, including compensation of trustees and their
30 attorneys, before and in preference to the expenses of the
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1 administration and obligations of the grantor's ~~settlor's~~
2 ~~estate and enforceable claims of the settlor's creditors.~~

3 Section 188. Section 737.306, Florida Statutes, is
4 amended to read:

5 737.306 Personal liability of trustee.--

6 (1)(a) Unless otherwise provided in the contract, a
7 trustee is not personally liable on contracts, except
8 contracts for attorneys' fees, properly entered into in the
9 trustee's fiduciary capacity in the course of administration
10 of the trust estate unless the trustee ~~he or she~~ fails to
11 reveal that ~~his or her~~ representative capacity and identify
12 the trust estate in the contract.

13 (b) A trustee is personally liable for obligations
14 arising from ownership or control of property of the trust
15 estate or for torts committed in the course of administration
16 of the trust estate only if the trustee is personally at
17 fault.

18 (c) Claims based on contracts, except contracts for
19 attorneys' fees, entered into by a trustee in his or her
20 fiduciary capacity, on obligations arising from ownership or
21 control of the trust estate, or on torts committed in the
22 course of trust administration may be asserted against the
23 trust estate by proceeding against the trustee in the
24 trustee's ~~his or her~~ fiduciary capacity, whether or not the
25 trustee is personally liable.

26 (2) Issues of liability between the trust estate and
27 the trustee individually may be determined in a proceeding for
28 accounting, surcharge, or indemnification, or in any other
29 appropriate proceeding.

30 (3) A successor trustee is not personally liable for
31 any action taken or omitted to be taken by any prior trustee;

1 nor does any successor trustee have a duty to institute any
2 action against any prior trustee, or file any claim against
3 any prior trustee's estate, for any of the prior trustee's
4 acts or omissions as trustee under any of the following
5 circumstances:

6 (a) The successor trustee succeeds a trustee who was
7 also the grantor of a trust that was revocable during the time
8 that the grantor served as trustee;

9 (b) As to any beneficiary who has waived any
10 accounting required by s. 737.303, but only as to the periods
11 included in the ~~such~~ waiver;

12 (c) As to any beneficiary who has released the
13 successor trustee from the ~~such~~ duty to institute any action
14 or file any claim;

15 (d) As to any person who is not a beneficiary within
16 the meaning of s. 737.303(4)(b); or

17 (e) As to any beneficiary described in s.
18 737.303(4)(b):

19 1. If a super majority of the reasonably ascertainable
20 current income or principal beneficiaries described in s.
21 737.303(4)(b)1. and a super majority of the reasonably
22 ascertainable remainder beneficiaries described in s.
23 737.303(4)(b)2. have released the successor trustee;

24 2. If the beneficiary has not delivered a written
25 request to the successor trustee to institute an action or
26 file a claim against the prior trustee within 6 months after
27 the date of the successor trustee's acceptance of the trust,
28 if the successor trustee has notified the beneficiary in
29 writing of its acceptance in accordance with s. 737.303(1) and
30 that ~~such~~ writing advises the beneficiary that, unless the
31 beneficiary delivers the ~~such~~ written request within 6 months

1 after the date of acceptance, the ~~his or her~~ right to proceed
2 against the successor trustee will be barred pursuant to this
3 section; or

4 3. For any action or claim that the beneficiary is
5 barred from bringing against the prior trustee.

6 ~~(4)(a) Two years after the death of a settlor, neither~~
7 ~~a trust described in s. 733.707(3) as established by the~~
8 ~~settlor, the trustee of the trust, nor any beneficiary may be~~
9 ~~held liable for any claim or cause of action against the~~
10 ~~settlor by a creditor who seeks to recover from the trust,~~
11 ~~trustee, or beneficiary.~~

12 ~~(b) This subsection does not apply to a creditor who~~
13 ~~has timely filed a claim against the settlor's estate under s.~~
14 ~~733.702 within 2 years after the settlor's death and whose~~
15 ~~claim has not been paid or otherwise disposed of, even if the~~
16 ~~settlor's estate proceedings have been closed or otherwise~~
17 ~~completed.~~

18 ~~(c) This subsection does not affect the lien of a duly~~
19 ~~recorded mortgage or security interest or the right to~~
20 ~~foreclose and enforce the mortgage or lien.~~

21 (f)~~(5)~~ For the purposes of this section, a super
22 majority of beneficiaries means at least two-thirds in
23 interest of the beneficiaries if the interests of the
24 beneficiaries are reasonably ascertainable; otherwise, it
25 means at least two-thirds in number of the beneficiaries. A
26 release or waiver under this section may be exercised by a
27 legal representative or natural guardian of the beneficiary
28 without the filing of any proceeding or approval of any court.
29 Nothing in this ~~subsection(3)~~ affects any liability of the
30 prior trustee or the right of the successor trustee or any

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1 beneficiary to pursue an action or claim against the prior
2 trustee.

3 Section 189. Section 737.3061, Florida Statutes, is
4 created to read:

5 737.3061 Limitations on actions against certain
6 trusts.--

7 (1) After the death of a grantor, no creditor of the
8 grantor may bring, maintain, or continue any direct action
9 against a trust described in s. 733.707(3), the trustee of the
10 trust or any beneficiary of the trust that is dependent on the
11 individual liability of the grantor. Those claims and causes
12 of action against the grantor shall be presented and enforced
13 against the grantor's estate as provided in part VII of
14 chapter 733, and the personal representative of the grantor's
15 estate may obtain payment from the trustee of a trust
16 described in s. 733.707(3) as provided in ss. 733.607(2),
17 733.707(3), and 737.3054(1).

18 (2) This section shall not preclude a direct action
19 against a trust described in s. 733.707(3), the trustee of the
20 trust, or a beneficiary of the trust that is not dependent on
21 the individual liability of the grantor.

22 (3) This section does not affect the lien of any duly
23 recorded mortgage or security interest or the lien of any
24 person in possession of personal property or the right to
25 foreclose and enforce the mortgage or lien.

26 Section 190. Section 737.308, Florida Statutes, is
27 amended to read:

28 737.308 Notice of trust.--

29 (1) Upon the death of a grantor ~~settlor~~ of a trust
30 described in s. 733.707(3), the trustee must file a notice of
31 trust with the court of the county of the grantor's ~~settlor's~~

1 domicile and the court having jurisdiction of the grantor's
2 ~~settlor's~~ estate.

3 (2) The notice of trust must contain the name of the
4 grantor ~~settlor~~, the grantor's ~~settlor's~~ date of death, the
5 title of the trust, if any, the date of the trust, and the
6 name and address of the trustee.

7 (3) If the grantor's ~~settlor's~~ probate proceeding has
8 been commenced, the clerk must notify the trustee in writing
9 of the date of the commencement of the probate proceeding and
10 the file number.

11 (4) The clerk shall file and index the notice of trust
12 in the same manner as a caveat, unless there exists a probate
13 proceeding for the grantor's ~~settlor's~~ estate in which case
14 the notice of trust must be filed in the probate proceeding
15 and the clerk shall send a copy to the personal
16 representative.

17 (5) The clerk shall send a copy of any caveat filed
18 regarding the grantor ~~settlor~~ to the trustee, and the Notice
19 of Trust to any caveator, unless there is a probate proceeding
20 pending and the personal representative and the trustee are
21 the same.

22 ~~(6) In any proceeding affecting the expenses of the~~
23 ~~administration of the estate, or any claims described in s.~~
24 ~~733.702(1), the trustee of a trust described in s. 733.707(3)~~
25 ~~is an interested person in the administration of the grantor's~~
26 ~~estate.~~

27 ~~(6)(7)~~ Any proceeding affecting the expenses of the
28 administration or obligations of the grantor's estate ~~or any~~
29 ~~claims described in s. 733.702(1)~~ prior to the trustee filing
30 a notice of trust are binding upon the trustee.

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1 ~~(7)(8)~~ The trustee's failure to file the notice of
2 trust does not affect the trustee's obligation to pay expenses
3 of administration and obligations of the grantor's estate
4 ~~enforceable claims~~ as provided in s. 733.607(2).

5 Section 191. Section 215.965, Florida Statutes, is
6 amended to read:

7 215.965 Disbursement of state moneys.--Except as
8 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.
9 717.124(5), s. 732.107(5)~~(6)~~, or s. 733.816(5), all moneys in
10 the State Treasury shall be disbursed by state warrant, drawn
11 by the Comptroller upon the State Treasury and payable to the
12 ultimate beneficiary. This authorization shall include
13 electronic disbursement.

14 Section 192. Subsection (3) of section 660.46, Florida
15 Statutes, is amended to read:

16 660.46 Substitution of fiduciaries.--

17 (3) Unless a waiver or consent shall be filed in the
18 proceedings as provided in subsection (4), the provisions of
19 s. 731.301(1)~~(a)~~, ~~(c)~~, and (2)~~(d)~~ shall apply with respect to
20 notice of the proceedings to all persons who are then
21 cofiduciaries with the original fiduciary, other than a person
22 joining as a petitioner in the proceedings; to all persons
23 named in the governing instrument as substitutes or successors
24 to the fiduciary capacity of the original fiduciary; to the
25 persons then living who are entitled under the governing
26 instrument to appoint a substitute or successor to act in the
27 fiduciary capacity of the original fiduciary; to all vested
28 beneficiaries of the fiduciary account; and to all then-living
29 originators of the governing instrument. Unless a waiver or
30 consent shall be filed in the proceedings as provided in
31 subsection (4), the provisions of s. 731.301~~(2)~~ shall apply

1 with respect to notice to all contingent beneficiaries of the
2 fiduciary account. Only the persons or classes of persons
3 described in the foregoing provisions of this subsection shall
4 be deemed to be interested persons for the purposes of this
5 section and the proceedings and notices provided for in this
6 section; and the provisions of ss. 731.301(3) and
7 731.303(3)~~(4)~~and(4)~~(5)~~, relating to notice requirements, the
8 effect of notice, and representation of interests, shall apply
9 to the proceedings provided for in this section.

10 Section 193. Subsection (1) of section 737.111,
11 Florida Statutes, is amended to read:

12 737.111 Execution requirements for express trusts.--

13 (1) The testamentary aspects of a trust defined in s.
14 731.201(34)~~(33)~~, are invalid unless the trust instrument is
15 executed by the grantor ~~settlor~~ with the formalities required
16 for the execution of a will.

17 Section 194. In editing manuscript for the next
18 official version of the Florida Statutes, the Division of
19 Statutory Revision of the Office of Legislative Services is
20 directed to:

21 (1) Change the title of Part II of Chapter 732,
22 Florida Statutes, from "Elective Share of Surviving Spouse" to
23 "Elective Share of Surviving Spouse; Rights in Community
24 Property."

25 (2) Change the title of Part III of Chapter 733,
26 Florida Statutes, from "Priority to Administer and
27 Qualifications of Personal Representative" to "Preference in
28 Appointment and Qualifications of Personal Representative."

29 (3) Change the title of Part IV of Chapter 733,
30 Florida Statutes, from "Appointment of Personal
31 Representative; Bonds" to "Fiduciary Bonds."

1 (4) Change the title of Part V of Chapter 733, Florida
2 Statutes, from "Curators; Successor Personal Representative;
3 Removal" to "Curators; Resignation and Removal of Personal
4 Representatives."

5 Section 195. This act shall take effect January 1,
6 2002. The substantive rights of all persons that have vested
7 prior to January 1, 2002, shall be determined as provided in
8 former chapters 63, 215, 409, 660, and 731-737, Florida
9 Statutes, as they existed prior to January 1, 2002. The
10 procedures for the enforcement of substantive rights which
11 have vested prior to January 1, 2002, shall be as provided in
12 this act, except that any Family Administration filed before
13 January 1, 2002, may be completed as a Family Administration.

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