

Bill No. CS for SB 402

Amendment No.      Barcode 192000

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Burt moved the following amendment:

**Senate Amendment (with title amendment)**  
Delete everything after the enacting clause

and insert:

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

63.172 Effect of judgment of adoption.--

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

(b) It terminates all legal relationships between the adopted person and the adopted person's relatives, including the birth parents, except a birth parent who is a petitioner or who is married to a petitioner, so that the adopted person thereafter is a stranger to his or her former relatives for all purposes, including ~~inheritance~~ and the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some

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1 designation not based on a parent and child or blood  
2 relationship, except that rights of inheritance shall be as  
3 provided in the Florida Probate Code.

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

13 Section 2. Section 409.9101, Florida Statutes, is  
14 amended to read:

15 409.9101 Recovery for payments made on behalf of  
16 Medicaid-eligible persons.--

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

19 (2) It is the intent of the Legislature by this  
20 section to supplement Medicaid funds that are used to provide  
21 medical services to eligible persons. Medicaid estate recovery  
22 shall ~~generally~~ be accomplished by the agency through the  
23 filing a statement of claim claims against the estate of a  
24 estates of deceased Medicaid recipient recipients as provided  
25 in part VII of chapter 733. Recovery ~~The recoveries~~ shall be  
26 made pursuant to federal authority in s. 13612 of the Omnibus  
27 Budget Reconciliation Act of 1993, which amends s. 1917(b)(1)  
28 of the Social Security Act, 42 U.S.C. s. 1396p(b)(1).

29 ~~(3) Pursuant to s. 733.212(4)(a), the personal~~  
30 ~~representative of the estate of the decedent shall serve the~~  
31 ~~agency with a copy of the notice of administration of the~~

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1 ~~estate within 3 months after the first publication of the~~  
2 ~~notice, unless the agency has already filed a claim pursuant~~  
3 ~~to this section.~~

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

19 ~~(4)(5) At the time of filing the claim, The agency may~~  
20 ~~reserve the right to amend the claim as a matter of right up~~  
21 ~~to 1 year after the last date medical services were rendered~~  
22 ~~to the decedent amounts based on medical claims submitted by~~  
23 ~~providers subsequent to the agency's initial claim~~  
24 ~~calculation.~~

25 ~~(5)(6) The claim of the agency shall be the current~~  
26 ~~total allowable amount of Medicaid payments as denoted in the~~  
27 ~~agency's provider payment processing system at the time the~~  
28 ~~agency's claim or amendment is filed. The agency's provider~~  
29 ~~processing system reports shall be admissible as prima facie~~  
30 ~~evidence in substantiating the agency's claim.~~

31 ~~(7) The claim of the agency under this section shall~~

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1 ~~constitute a Class 3 claim under s. 733.707(1)(c), as provided~~  
 2 ~~in s. 414.28(1).~~

3 (6)(8) The debt claim created under this section shall  
 4 not be enforced if the recipient is survived by:

5 (a) A spouse;

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

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

10 ~~(7)(9) In accordance with s. 4, Art. X of the State~~  
 11 ~~Constitution, No debt claim under this section shall be~~  
 12 ~~enforced against any property that is determined to be exempt~~  
 13 ~~from the claims of creditors under the constitution or laws of~~  
 14 ~~this state the homestead of the deceased Medicaid recipient~~  
 15 ~~and is determined to be exempt from the claims of creditors of~~  
 16 ~~the deceased Medicaid recipient.~~

17 (8)(10) The agency shall not recover from an estate if  
 18 doing so would cause undue hardship for the qualified heirs,  
 19 as defined in s. 731.201. The personal representative of an  
 20 estate and any heir may request that the agency waive recovery  
 21 of any or all of the debt when recovery would create a  
 22 hardship. A hardship does not exist solely because recovery  
 23 will prevent any heirs from receiving an anticipated  
 24 inheritance. The following criteria shall be considered by the  
 25 agency in reviewing a hardship request:

26 (a) The heir:

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

28 2. Resided there at the time of the death of the  
 29 decedent;

30 3. Has made the residence his or her primary residence  
 31 for the 12 months immediately preceding the death of the

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1 decedent; and

2 4. Owns no other residence;

3 (b) The heir would be deprived of food, clothing,  
4 shelter, or medical care necessary for the maintenance of life  
5 or health;

6 (c) The heir can document that he or she provided  
7 full-time care to the recipient which delayed the recipient's  
8 entry into a nursing home. The heir must be either the  
9 decedent's sibling or the son or daughter of the decedent and  
10 must have resided with the recipient for at least 1 year prior  
11 to the recipient's death; or

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

14 (9)~~(11)~~ Instances arise in Medicaid estate-recovery  
15 cases where the assets include a settlement of a claim against  
16 a liable third party. The agency's claim under s. 409.910 must  
17 be satisfied prior to including the settlement proceeds as  
18 estate assets. The remaining settlement proceeds shall be  
19 included in the estate and be available to satisfy the  
20 Medicaid estate-recovery claim. The Medicaid estate-recovery  
21 share shall be one-half of the settlement proceeds included in  
22 the estate. Nothing in this subsection is intended to limit  
23 the agency's rights against other assets in the estate not  
24 related to the settlement. However, in no circumstances shall  
25 the agency's recovery exceed the total amount of Medicaid  
26 medical assistance provided to the recipient.

27 (10)~~(12)~~ In instances where there are no liquid assets  
28 to satisfy the Medicaid estate-recovery claim, if there is  
29 nonexempt personal property or nonhomestead real property  
30 which is not protected homestead and the costs of sale will  
31 not exceed the proceeds, the property shall be sold to satisfy

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1 the Medicaid estate-recovery claim. Real property shall not be  
2 transferred to the agency in any instance.

3 ~~(11)(13)~~ The agency is authorized to adopt rules to  
4 implement the provisions of this section.

5 Section 3. Section 655.936, Florida Statutes, is  
6 amended to read:

7 655.936 Delivery of safe-deposit box contents or  
8 property held in safekeeping to personal representative.--

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

17 (2) If a foreign personal representative of a deceased  
18 lessee has been appointed by a court of any other state, a  
19 lessor may, at its discretion, after 3 months from the  
20 issuance to such foreign personal representative of his or her  
21 letters of authority, deliver to such foreign personal  
22 representative all properties deposited with it for  
23 safekeeping and the contents of any safe-deposit box in the  
24 name of the decedent if at such time the lessor has not  
25 received written notice of the appointment of a personal  
26 representative in this state, and such delivery is a valid  
27 discharge of the lessor for all property or contents so  
28 delivered. Such foreign personal representative shall furnish  
29 the lessor with an affidavit setting forth facts showing the  
30 domicile of the deceased lessee to be other than this state  
31 and stating that there are no unpaid creditors of the deceased

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1 lessee in this state, together with a certified copy of his or  
 2 her letters of authority. A lessor making delivery pursuant  
 3 to this subsection shall maintain in its files a receipt  
 4 executed by such foreign personal representative which  
 5 itemizes in detail all property so delivered.

6 (3) Notwithstanding the provisions of subsection (1),  
 7 after the death of a lessee of a safe-deposit box, the lessor  
 8 shall permit the initial opening of the safe-deposit box and  
 9 the removal of the contents of the safe-deposit box and the  
 10 removal of the contents of the safe-deposit box in accordance  
 11 with s. 733.6065.

12 ~~(4)(3)~~ A lessor is not liable for damages or penalty  
 13 by reason of any delivery made pursuant to this section.

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

24 Section 4. Section 731.005, Florida Statutes, is  
 25 amended to read:

26 731.005 Short title.--Chapters 731-735 shall be known  
 27 and may be cited as the Florida Probate Code and ~~herein~~  
 28 referred to as "the code" ~~in this act.~~

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

31 731.011 Determination of substantive rights;

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1 ~~procedures.--The code became Florida Probate Code shall become~~  
2 effective on January 1, 1976. The substantive rights of all  
3 persons that ~~have~~ vested prior to January 1, 1976, shall be  
4 determined as provided in former chapters 731-737 and 744-746  
5 ~~as they existed prior to January 1, 1976.~~ The procedures for  
6 the enforcement of vested substantive rights ~~that have vested~~  
7 ~~before January 1, 1976,~~ shall be as provided in the Florida  
8 Probate Rules ~~this code.~~

9 Section 6. Section 731.104, Florida Statutes, is  
10 amended to read:

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

21 Section 7. Section 731.106, Florida Statutes, is  
22 amended to read:

23 731.106 Assets of nondomiciliaries.--

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



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1 other instruments are located where the instrument is at the  
2 time of death.

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

19           Section 8. Section 731.107, Florida Statutes, is  
20 repealed:

21           ~~731.107 Adversary proceedings.--The rules of civil~~  
22 ~~procedure shall be applied in any adversary proceeding in~~  
23 ~~probate.~~

24           Section 9. Section 731.110, Florida Statutes, is  
25 amended to read:

26           731.110 Caveat; proceedings.--

27           (1) Any person, including a creditor, who ~~if any~~  
28 ~~creditor of the estate of a decedent~~ is apprehensive that an  
29 estate, either testate or intestate, will be administered  
30 ~~without the creditor's knowledge, or if any person other than~~  
31 ~~a creditor is apprehensive that an estate may be administered,~~

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1 or that a will may be admitted to probate, without the  
2 person's knowledge, ~~he or she~~ may file a caveat with the  
3 court.

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

15 Section 10. Section 731.111, Florida Statutes, is  
16 repealed:

17 ~~731.111 Notice to creditors.~~

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

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1 ~~of his or her attorney, and state the date of first~~  
2 ~~publication.~~

3 ~~(2) Notwithstanding the provisions of subsection (1),~~  
4 ~~the Department of Revenue is not barred from filing a claim~~  
5 ~~against the estate of a decedent for taxes due under chapter~~  
6 ~~199 after the expiration of the time for filing claims~~  
7 ~~provided in subsection (1), provided the department files its~~  
8 ~~claim within 30 days after the service of the inventory or~~  
9 ~~federal estate tax return on the department as provided in s.~~  
10 ~~198.13, whichever shall last occur. Additionally, in the event~~  
11 ~~that the information contained therein is amended or~~  
12 ~~supplemented, the department has the right to file its claim~~  
13 ~~or amend a previously filed claim within 30 days after the~~  
14 ~~service of such information.~~

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

17 731.201 General definitions.--Subject to additional  
18 definitions in subsequent chapters that are applicable to  
19 specific chapters or parts, and unless the context otherwise  
20 requires, in this code, in s. 409.9101, and in chapters 737,  
21 738, and 744:

22 (1) "Authenticated," when referring to copies of  
23 documents or judicial proceedings required to be filed with  
24 the court under this code, shall mean a certified copy or a  
25 copy authenticated according to the Federal Rules of Civil  
26 Procedure 28 U.S.C. s. 1733 or s. 1741.

27 (2) "Beneficiary" means heir at law, in an intestate  
28 estate, and devisee, in a testate estate. The term  
29 "beneficiary" does not apply to an heir at law or a devisee  
30 after that person's ~~his or her~~ interest in the estate has been  
31 satisfied. In the case of a devise to an existing trust or

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1 trustee, or to a trust or trustee described by will, in the  
2 absence of a conflict of interest of the trust, the trustee is  
3 a beneficiary of the estate. An owner of a beneficial interest  
4 in the trust is a beneficiary of the trust and is, in the  
5 absence of a conflict of interest of the trust, not a  
6 beneficiary of the estate.

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

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

17 (5) "Clerk" means the clerk or deputy clerk of the  
18 court.

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

20 (7) "Curator" means a person appointed by the court to  
21 take charge of the estate of a decedent until letters are  
22 issued.

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

30 (9) "Devisee" means a person designated in a will or  
31 trust to receive a devise. In the case of a devise to an

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1 existing trust or trustee, or to a trustee of a trust  
2 described by will, the trust or trustee is the devisee. The  
3 beneficiaries of the trust are not devisees.

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

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

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

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

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

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

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

26 (17) "Grantor" means one who creates or adds to a  
27 trust and includes "settlor" or "trustor" and a testator who  
28 creates or adds to a trust.

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

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1 decedent.

2           (19) "Incompetent" means a minor or a person  
3 adjudicated incompetent.

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

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

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

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

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

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

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

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

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

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

22 ~~(30)(29) "Residence" means a person's usual place of~~  
23 ~~dwelling and is synonymous with "domicile."~~

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

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1 obligations of the estate.

2 (32)~~(31)~~ "Security" means a security as defined in s.  
3 517.021.

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

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

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

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

31 Section 12. Section 731.301, Florida Statutes, is



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1 amended to read:

2 731.301 Notice; ~~method and time; proof.--~~

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

4 ~~(a) When formal notice to an interested person of a~~  
5 ~~petition or other proceeding is required, the notice shall be~~  
6 ~~given to the petitioner shall serve a copy of the petition to~~  
7 ~~any interested person or that person's her or his attorney as~~  
8 ~~provided in the Florida Probate Rules, if the interested~~  
9 ~~person has appeared by attorney or requested that notice be~~  
10 ~~sent to her or his attorney. The petition shall be served:~~

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

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

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

21 c. ~~On an incompetent person, by mailing a copy to the~~  
22 ~~incompetent, to the person having custody of the incompetent,~~  
23 ~~and to any legal guardian of the incompetent, at their~~  
24 ~~respective dwelling houses, usual places of abode, or regular~~  
25 ~~places of business or profession;~~

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

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

29 3. ~~In the circumstances provided in chapter 49, in the~~  
30 ~~manner provided therein.~~

31 ~~(b) If there is no answer served on the petitioner~~

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1 ~~within 20 days from the service of the petition, the petition~~  
2 ~~shall be considered ex parte. If an answer is served, a~~  
3 ~~hearing shall be set and reasonable notice given.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 732.101 Intestate estate.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           732.107 Escheat.--

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

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

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

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

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

16 ~~(3)(4) At any time within 10 years after the payment~~  
17 ~~to the Treasurer granting of letters, a person claiming to be~~  
18 ~~entitled to the proceeds estate of the decedent may petition~~  
19 ~~to reopen the administration to and assert entitlement his or~~  
20 ~~her rights to the proceeds escheated property. If the claimant~~  
21 ~~is entitled to any of the estate of the decedent, the court~~  
22 ~~shall fix the amount to which he or she is entitled, and it~~  
23 ~~shall be repaid to him or her with interest at the legal rate~~  
24 ~~by the officials charged with the disbursement of state school~~  
25 ~~funds. If no claim is timely asserted within the time fixed,~~  
26 ~~the title of the state's rights to state to the property and~~  
27 ~~the proceeds shall become absolute.~~

28 ~~(4)(5) The Department of Legal Affairs shall represent~~  
29 ~~the state in all proceedings concerning escheated estates.~~

30 ~~(5)(6)(a) If a person entitled to the proceeds funds~~  
31 ~~assigns the his or her rights to receive payment to an~~

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1 attorney, Florida-certified public accountant, or private  
2 investigative agency which is duly licensed to do business in  
3 this state pursuant to a written agreement with that such  
4 person, the Department of Banking and Finance is authorized to  
5 make distribution in accordance with the such assignment.

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

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

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

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

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

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

31 Section 19. Effective October 1, 2001, subsection (8)



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1 of section 732.2025, Florida Statutes, is amended to read:

2 732.2025 Definitions.--As used in ss.

3 732.2025-732.2155, the term:

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

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

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

19

20 ~~(c) The requirement for court approval and the limitation on~~  
21 ~~ineligible family trustees shall not apply if the aggregate~~  
22 ~~value of all the trust property as of the applicable valuation~~  
23 ~~date in all a qualifying special needs trusts for the spouse~~  
24 ~~trust is less than \$100,000. For purposes of this subsection,~~  
25 ~~value is determined on the "applicable valuation date" as~~  
26 ~~defined in s. 732.2095(1)(a).~~

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

30 732.2035 Property entering into elective  
31 estate.--Except as provided in s. 732.2045, the elective

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1 estate consists of the sum of the values as determined under  
2 s. 732.2055 of the following property interests:

3 (2) The decedent's ownership interest in accounts or  
4 securities registered in "Pay On Death," "Transfer On Death,"  
5 "In Trust For," or coownership with right of survivorship  
6 form. For this purpose, "decedent's ownership interest"  
7 means, in the case of accounts or securities held in tenancy  
8 by the entirety, one-half of the value of the account or  
9 security, and in all other cases, that portion of the accounts  
10 or securities which the decedent had, immediately before  
11 death, the right to withdraw or use without the duty to  
12 account to any person.

13 (5)(a) That portion of property, other than property  
14 described in subsection (3), subsection (4), or subsection  
15 (7), transferred by the decedent to the extent that at the  
16 time of the decedent's death:

17 1. The decedent possessed the right to, or in fact  
18 enjoyed the possession or use of, the income or principal of  
19 the property; or

20 2. The principal of the property could, in the  
21 discretion of any person other than the spouse of the  
22 decedent, be distributed or appointed to or for the benefit of  
23 the decedent.

24  
25 In the application of this subsection, a right to payments  
26 under a commercial or private from an annuity, an annuity  
27 trust, a unitrust, or under a similar contractual arrangement  
28 shall be treated as a right to that portion of the income of  
29 the property necessary to equal the annuity, unitrust, or  
30 other ~~contractual~~ payment.

31 Section 21. Effective October 1, 2001, subsection (1)

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1 of section 732.2045, Florida Statutes, is amended to read:

2 732.2045 Exclusions and overlapping application.--

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

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

9 (b) Any transfer of property by the decedent to the  
10 extent the decedent received adequate consideration in money  
11 or money's worth for the transfer.

12 (c) Any transfer of property by the decedent made with  
13 the written consent of the decedent's spouse. For this  
14 purpose, spousal consent to split-gift treatment under the  
15 United States gift tax laws does not constitute written  
16 consent to the transfer by the decedent.

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

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

23 (f) The decedent's one-half of the property to which  
24 ss. 732.216-732.228 apply and real property that is community  
25 property under the laws of the jurisdiction where it is  
26 located.

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

29 (h) Property included in the gross estate of the  
30 decedent for federal estate tax purposes solely because the  
31 decedent possessed a general power of appointment.

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1           (i) Property which constitutes the protected homestead  
 2 of the decedent whether held by the decedent or by a trust at  
 3 the decedent's death.

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

7           732.2055 Valuation of the elective estate.--For  
 8 purposes of s. 732.2035, "value" means:

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

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

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

16           732.2075 Sources from which elective share payable;  
 17 abatement.--

18           (2) If, after the application of subsection (1), the  
 19 elective share is not fully satisfied, the unsatisfied balance  
 20 shall be apportioned among the direct recipients of the  
 21 remaining elective estate in the following order of priority:

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

24           (b) Class 2.--Recipients of property interests, other  
 25 than protected charitable interests, included in the elective  
 26 estate under s. 732.2035(2), (3), or (6) and, to the extent  
 27 the decedent had at the time of death the power to designate  
 28 the recipient of the property, property interests, other than  
 29 protected charitable interests, included under s. 732.2035(5)  
 30 and (7).

31           (c) Class 3.--Recipients of all other property

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1 interests, other than protected charitable interests, included  
 2 in the elective estate ~~except interests for which a charitable~~  
 3 ~~deduction with respect to the transfer of the property was~~  
 4 ~~allowed or allowable to the decedent or the decedent's spouse~~  
 5 ~~under the United States gift tax laws.~~

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

11  
 12 For purposes of this subsection, a protected charitable  
 13 interest is any interest for which a charitable deduction with  
 14 respect to the transfer of the property was allowed or  
 15 allowable to the decedent or the decedent's spouse under the  
 16 United States gift tax laws. A protected charitable lead  
 17 interest is a protected charitable interest where one or more  
 18 deductible interests in charity precede some other  
 19 nondeductible interest or interests in the property.

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

23 732.2085 Liability of direct recipients and  
 24 beneficiaries.--

25 (1) Only direct recipients of property included in the  
 26 elective estate and the beneficiaries of the decedent's  
 27 probate estate or of any trust that is a direct recipient, are  
 28 liable to contribute toward satisfaction of the elective  
 29 share.

30 (a) Within each of the classes described in s.  
 31 732.2075(2)(b), ~~and~~ (c), and (d), each direct recipient is

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1 liable in an amount equal to the value, as determined under s.  
2 732.2055, of the proportional part of the liability for all  
3 members of the class.

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

7 (a) No further contribution toward satisfaction of the  
8 elective share shall be required with respect to that ~~such~~  
9 property.

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

13 732.2095 Valuation of property used to satisfy  
14 elective share.--

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

16 (a) "Applicable valuation date" means:

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

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

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

25 4. In the case of property distributed to the  
26 surviving spouse by the personal representative, the date of  
27 distribution.

28 5. Except as provided in subparagraphs 1., 2., and 3.,  
29 in the case of property passing in trust for the surviving  
30 spouse, the date or dates the trust is funded in satisfaction  
31 of the elective share.

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

3           7. In the case of proceeds of any policy of insurance  
4 payable to the surviving spouse, the date of the decedent's  
5 death.

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

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

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

15           (d) If the surviving spouse has an interest in a trust  
16 that does not meet the requirements of either an elective  
17 share trust or a qualifying special needs trust, the value of  
18 the spouse's interest is the transfer tax value of the  
19 interest on the applicable valuation date; however, the  
20 aggregate value of all of the spouse's interests in the trust  
21 shall not exceed one-half of the value of the trust principal  
22 on the applicable valuation date.

23           Section 26. Effective October 1, 2001, section  
24 732.2105, Florida Statutes, is amended to read:

25           732.2105 Effect of election on other interests.--

26           ~~(1)~~ The elective share shall be in addition to  
27 homestead, exempt property, and allowances as provided in part  
28 IV.

29           ~~(2) If an election is filed, the balance of the~~  
30 ~~elective estate, after the application of s. 732.2145(1),~~  
31 ~~shall be administered as though the surviving spouse had~~

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1 ~~predeceased the decedent.~~

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

4 732.2125 Right of election; by whom exercisable.--The  
5 right of election may be exercised:

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

13 Section 28. Effective October 1, 2001, section  
14 732.2135, Florida Statutes, is amended to read:

15 732.2135 Time of election; extensions; withdrawal.--

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

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

30 (3) The surviving spouse or an attorney in fact,  
31 guardian of the property, or personal representative of the



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1 surviving spouse may withdraw an election at any time within 8  
2 months of the decedent's death and before the court's order of  
3 contribution. If an election is withdrawn, the court may  
4 assess attorney's fees and costs against the surviving spouse  
5 or the surviving spouse's estate.

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

9 Section 29. Effective October 1, 2001, subsections (1)  
10 and (4) of section 732.2145, Florida Statutes, are amended to  
11 read:

12 732.2145 Order of contribution; personal  
13 representative's duty to collect contribution.--

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

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

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

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

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

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

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

14           (b) The decedent was not married to the decedent's  
15 surviving spouse when the property was transferred to the  
16 trust; and

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

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

21           732.218 Rebuttable presumptions.--In determining  
22 whether ss. 732.216-732.228 apply to specific property, the  
23 following rebuttable presumptions apply:

24           (2) Real property located in this state, other than  
25 homestead and real property held as tenants by the entirety  
26 ~~and homestead~~, and personal property wherever located acquired  
27 by a married person while domiciled in a jurisdiction under  
28 whose laws property could not then be acquired as community  
29 property and title to which was taken in a form which created  
30 rights of survivorship are presumed ~~not~~ to be property to  
31 which these sections do not apply.

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1           Section 32. Section 732.219, Florida Statutes, is  
2 amended to read:

3           732.219 Disposition upon death.--Upon the death of a  
4 married person, one-half of the property to which ss.  
5 732.216-732.228 apply is the property of the surviving spouse  
6 and is not subject to testamentary disposition by the decedent  
7 or distribution under the laws of succession of this state.  
8 One-half of that property is the property of the decedent and  
9 is subject to testamentary disposition or distribution under  
10 the laws of succession of this state. The decedent's one-half  
11 of ~~that the~~ property is not in the elected estate ~~subject to~~  
12 ~~the surviving spouse's right to elect against the will.~~

13           Section 33. Section 732.221, Florida Statutes, is  
14 amended to read:

15           732.221 Perfection of title of personal representative  
16 or beneficiary, heir, or devisee.--If the title to any  
17 property to which ss. 732.216-732.228 apply is held by the  
18 surviving spouse at the time of the decedent's death, the  
19 personal representative or a beneficiary ~~an heir or devisee~~ of  
20 the decedent may institute an action to perfect title to the  
21 property. The personal representative has no ~~fiduciary~~ duty  
22 to discover whether any property held by the surviving spouse  
23 is property to which ss. 732.216-732.228 ~~these sections~~ apply,  
24 unless a written demand is made by a beneficiary ~~an heir,~~  
25 ~~devisee, or creditor of the decedent~~ within 3 ~~6~~ months after  
26 service of a copy the first publication of the notice of  
27 administration on the beneficiary or by a creditor within 3  
28 months after the first publication of the notice to creditors.

29           Section 34. Subsections (1) and (2) of section  
30 732.222, Florida Statutes, are amended to read:

31           732.222 Purchaser for value or lender.--

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

7           (2) If a personal representative or a beneficiary ~~an~~  
8 ~~heir or devisee~~ of the decedent has apparent title to property  
9 to which ss. 732.216-732.228 apply, a purchaser for value or a  
10 lender taking a security interest in the property takes that  
11 ~~his or her~~ interest in the property free of any rights of the  
12 surviving spouse.

13           Section 35. Section 732.223, Florida Statutes, is  
14 amended to read:

15           732.223 Perfection of title of surviving spouse.--If  
16 the title to any property to which ss. 732.216-732.228 apply  
17 was held by the decedent at the time of the decedent's ~~his or~~  
18 ~~her~~ death, title of the surviving spouse may be perfected by  
19 an order of the probate court or by execution of an instrument  
20 by the personal representative or the beneficiaries ~~heirs or~~  
21 ~~devisees~~ of the decedent with the approval of the probate  
22 court. The probate court in which the decedent's estate is  
23 being administered has no duty to discover whether property  
24 held by the decedent is property to which ss. 732.216-732.228  
25 apply. The personal representative has no duty to discover  
26 whether property held by the decedent is property to which ss.  
27 732.216-732.228 apply unless a written demand is made by the  
28 surviving spouse or the spouse's successor in interest within  
29 3 6 months after service of a copy of the first publication of  
30 the notice of administration on the surviving spouse or the  
31 spouse's successor in interest.

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1           Section 36. Section 732.302, Florida Statutes, is  
2 amended to read:

3           732.302 Pretermitted children.--When a testator omits  
4 to provide by ~~in his or her~~ will for any of his or her  
5 children born or adopted after making the will and the child  
6 has not received a part of the testator's property equivalent  
7 to a child's part by way of advancement, the child shall  
8 receive a share of the estate equal in value to that which the  
9 child ~~he or she~~ would have received if the testator had died  
10 intestate, unless:

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

13           (2) The testator had one or more children when the  
14 will was executed and devised substantially all the estate to  
15 the other parent of the pretermitted child and that other  
16 parent survived the testator and is entitled to take under the  
17 will.

18  
19 The share of the estate that is assigned to the pretermitted  
20 child shall be obtained in accordance with s. 733.805.

21           Section 37. Section 732.401, Florida Statutes, is  
22 amended to read:

23           732.401 Descent of homestead.--

24           (1) If not devised as permitted by law and the Florida  
25 Constitution, the homestead shall descend in the same manner  
26 as other intestate property; but if the decedent is survived  
27 by a spouse and lineal descendants, the surviving spouse shall  
28 take a life estate in the homestead, with a vested remainder  
29 to the lineal descendants in being at the time of the  
30 decedent's death per stirpes.

31           (2) Subsection (1) shall not apply to ~~if the decedent~~

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1 ~~was domiciled in Florida and resided on real property that the~~  
2 ~~decendent and the surviving spouse owned as tenants by the~~  
3 ~~entirety, the real property shall not be homestead property.~~

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

6 732.4015 Devise of homestead.--

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

8 (a) "Owner" includes the grantor settlor of a trust  
9 described in s. 733.707(3) that is evidenced by a written  
10 instrument which is in existence at the time of the grantor's  
11 settlor's death as if the interest held in trust was owned by  
12 the grantor pursuant to which the settlor retained the right  
13 ~~either alone or in conjunction with any other person to amend~~  
14 ~~or revoke the trust at any time before his or her death.~~

15 (b) "Devise" includes a disposition by trust of that  
16 portion of the trust estate which, if titled in the name of  
17 the grantor settlor of the trust, would be the grantor's  
18 settlor's homestead.

19 Section 39. Subsections (4) and (6) of section  
20 732.402, Florida Statutes, are amended, and subsection (7) is  
21 added to said section, to read:

22 732.402 Exempt property.--

23 (4) Exempt property shall be in addition to protected  
24 homestead, statutory entitlements, and any property passing  
25 under ~~to the surviving spouse or heirs of the decedent under~~  
26 ~~s. 4, Art. X of the State Constitution or the decedent's will,~~  
27 ~~or by intestate succession, elective share, or family~~  
28 ~~allowance.~~

29 (6) Persons entitled to exempt property shall be  
30 deemed to have waived their rights under this section unless a  
31 petition for determination of exempt property is filed by or

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1 on behalf of the persons entitled to the exempt property  
2 within 4 months after the date of service ~~the first~~  
3 ~~publication~~ of the notice of administration or within 40 days  
4 from the date of termination of any proceeding involving the  
5 construction, admission to probate, or validity of the will or  
6 involving any other matter affecting any part of the estate  
7 subject to this section.

8 (7) Property determined as exempt under this section  
9 shall be excluded from the value of the estate before  
10 residuary, intestate, or pretermitted or elective shares are  
11 determined.

12 Section 40. Section 732.403, Florida Statutes, is  
13 amended to read:

14 732.403 Family allowance.--In addition to protected  
15 homestead and statutory entitlements ~~exempt property~~, if the  
16 decedent was domiciled in Florida at the time of death, the  
17 surviving spouse and the decedent's lineal heirs ~~whom~~ the  
18 decedent was supporting or was obligated to support ~~or who~~  
19 ~~were in fact being supported by him or her~~ are entitled to a  
20 reasonable allowance in money out of the estate for their  
21 maintenance during administration. ~~After notice and hearing,~~  
22 The court may order this allowance to be paid as a lump sum or  
23 in periodic installments. The allowance shall not exceed a  
24 total of \$18,000 ~~\$6,000~~. It shall be paid to the surviving  
25 spouse, if living, for the use of the spouse and dependent  
26 lineal heirs. If the surviving spouse is not living, it shall  
27 be paid to the lineal heirs or to the persons having their  
28 care and custody. If any lineal heir is not living with the  
29 surviving spouse, the allowance may be made partly to the  
30 lineal heir or ~~his or her~~ guardian or other person having the  
31 ~~lineal~~ heir's care and custody and partly to the surviving

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1 spouse, as the needs of the dependent ~~lineal~~ heir and the  
2 surviving spouse appear. ~~The family allowance shall have the~~  
3 ~~priority established by s. 733.707.~~ The family allowance is  
4 not chargeable against any benefit or share otherwise passing  
5 to the surviving spouse or to the dependent lineal heirs ~~by~~  
6 ~~intestate succession, elective share, or the will of the~~  
7 ~~decedent~~, unless the will otherwise provides. The death of any  
8 person entitled to a family allowance terminates the ~~his or~~  
9 ~~her~~ right to that ~~the~~ part of the allowance not paid. For  
10 purposes of this section, the term "lineal heir" or "lineal  
11 heirs" means lineal ascendants and lineal descendants of the  
12 decedent.

13 Section 41. Section 732.501, Florida Statutes, is  
14 amended to read:

15 732.501 Who may make a will.--Any person who is of  
16 sound mind and who is either 18 or more years of age or an  
17 emancipated minor ~~18 or more years of age who is of sound mind~~  
18 may make a will.

19 Section 42. Paragraph (a) of subsection (1) and  
20 subsection (2) of section 732.502, Florida Statutes, are  
21 amended to read:

22 732.502 Execution of wills.--Every will must be in  
23 writing and executed as follows:

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

- 25 1. The testator must sign the will at the end; or  
26 2. The testator's name must be subscribed at the end  
27 of the will by some other person in the testator's presence  
28 and by the testator's ~~his or her~~ direction.

29 (2) Any will, other than a holographic or nuncupative  
30 will, executed by a nonresident of Florida, either before or  
31 after this law takes effect, is valid as a will in this state



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1 if valid under the laws of the state or country where the will  
2 was executed ~~testator was at the time of execution~~. A will in  
3 the testator's handwriting that has been executed in  
4 accordance with subsection (1) shall not be considered a  
5 holographic will.

6 Section 43. Section 732.503, Florida Statutes, is  
7 amended to read:

8 732.503 Self-proof of will.--

9 (1) A will or codicil executed in conformity with s.  
10 732.502(1) ~~and (2)~~ may be made self-proved at the time of its  
11 execution or at any subsequent date by the acknowledgment of  
12 it by the testator and the affidavits of the witnesses, ~~each~~  
13 made before an officer authorized to administer oaths and  
14 evidenced by the officer's certificate attached to or  
15 following the will, in substantially the following form:

16  
17 STATE OF FLORIDA

18 COUNTY OF ....

19 I, \_\_\_\_\_, declare to the officer taking my  
20 acknowledgment of this instrument, and to the subscribing  
21 witnesses, that I signed this instrument as my will.

22

23

24

25

\_\_\_\_\_  
Testator

26

27

28

29

30

31

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1 testator and of each other.

2

3

4

\_\_\_\_\_

5

Witness

6

7

\_\_\_\_\_

8

Witness

9

10 Acknowledged and subscribed before me by the testator,  
11 (type or print testator's name), who is personally known to me  
12 or who has produced (state type of identification - see s.  
13 117.05(5)(b)2.) as identification, and sworn to and subscribed  
14 before me by the witnesses, (type or print name of first  
15 witness) who is personally known to me or who has produced  
16 (state type of identification - see s. 117.05(5)(b)2.) as  
17 identification and (type or print name of second witness) who  
18 is personally known to me or who has produced (state type of  
19 identification - see s. 117.05(5)(b)2.) as identification, and  
20 subscribed by me in the presence of the testator and the  
21 subscribing witnesses, all on (date).

22 (Signature of Officer)  
23 (Print, type, or stamp commissioned name and affix official  
24 seal)

25  
26 (2) A will or codicil made self-proved under former  
27 law, or executed in another state and made self-proved under  
28 the laws of that state, shall be considered as self-proved  
29 under this section.

30

31 ~~STATE OF ....~~

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1 COUNTY OF \_\_\_\_\_  
 2 We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ the testator and the  
 3 witnesses, respectively, whose names are signed to the  
 4 attached or foregoing instrument, having been sworn, declared  
 5 to the undersigned officer that the testator, in the presence  
 6 of witnesses, signed the instrument as the testator's last  
 7 will (codicil), that the testator (signed) (or directed  
 8 another to sign for him or her), and that each of the  
 9 witnesses, in the presence of the testator and in the presence  
 10 of each other, signed the will as a witness.

11 \_\_\_\_\_(Testator)\_\_\_\_\_  
 12 \_\_\_\_\_(Witness)\_\_\_\_\_  
 13 \_\_\_\_\_(Witness)\_\_\_\_\_

14 Subscribed and sworn to before me by \_\_\_\_\_, the testator  
 15 who is personally known to me or who has produced \_\_\_\_\_(type of  
 16 identification)\_\_\_\_ as identification, and by \_\_\_\_\_, a witness  
 17 who is personally known to me or who has produced \_\_\_\_\_(type of  
 18 identification)\_\_\_\_ as identification, and by \_\_\_\_\_, a witness  
 19 who is personally known to me or who has produced \_\_\_\_\_(type of  
 20 identification)\_\_\_\_ as identification, on \_\_\_\_\_, \_\_\_\_\_(year)\_\_\_\_\_

21 \_\_\_\_\_(Signature of Notary Public)\_\_\_\_\_  
 22 \_\_\_\_\_(Print, type, or stamp commissioned name of Notary  
 23 Public)\_\_\_\_\_

24  
 25 Section 44. Section 732.505, Florida Statutes, is  
 26 amended to read:  
 27 732.505 Revocation by writing.--A will or codicil, or  
 28 any part of either, is revoked:  
 29 (1) By a subsequent inconsistent will or codicil, even  
 30 though the subsequent inconsistent will or codicil does not  
 31 expressly revoke all previous wills or codicils, but the

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1 revocation extends only so far as the inconsistency ~~exists.~~

2 (2) By a subsequent ~~written~~ will, codicil, or other  
3 writing executed with the same formalities required for the  
4 execution of wills declaring the revocation, ~~if the same~~  
5 ~~formalities required for the execution of wills are observed~~  
6 ~~in the execution of the will, codicil, or other writing.~~

7 Section 45. Section 732.507, Florida Statutes, is  
8 amended to read:

9 732.507 Effect of subsequent marriage, birth, or  
10 dissolution of marriage.--

11 (1) Neither subsequent marriage, ~~nor subsequent~~  
12 ~~marriage and birth, nor~~ or adoption of lineal descendants  
13 shall revoke the prior will of any person, but the  
14 pretermitted child or spouse shall inherit as set forth in ss.  
15 732.301 and 732.302, regardless of the prior will.

16 (2) Any provision ~~provisions~~ of a will executed by a  
17 married person that, ~~which provision~~ affects the spouse of  
18 that person, shall become void upon the divorce of that person  
19 or upon the dissolution or annulment of the marriage. After  
20 the dissolution, divorce, or annulment, the ~~any such~~ will  
21 shall be administered and construed as if the former spouse  
22 had died at the time of the dissolution, divorce, or annulment  
23 of the marriage, unless the will or the dissolution or divorce  
24 judgment expressly provides otherwise.

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

28 732.513 Devises to trustee.--

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

31 (d) Because the only res of the trust is the possible

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1 expectancy of receiving, as a named beneficiary, a devise  
2 under a will or death benefits as described in s. 733.808, and  
3 even though the testator or other person has reserved any or  
4 all rights of ownership in the ~~such~~ death benefit policy,  
5 contract, or plan, including the right to change the  
6 beneficiary.

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

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

12 Section 47. Section 732.514, Florida Statutes, is  
13 amended to read:

14 732.514 Vesting of devises.--The death of the testator  
15 is the event that vests the right to devises unless the  
16 testator in the ~~his or her~~ will has provided that some other  
17 event must happen before a devise vests ~~shall vest~~.

18 Section 48. Section 732.515, Florida Statutes, is  
19 amended to read:

20 732.515 Separate writing identifying devises of  
21 tangible property.--~~A will may refer to a~~ written statement or  
22 list referred to in the decedent's will shall ~~to~~ dispose of  
23 items of tangible personal property, other than property used  
24 in trade or business, ~~not otherwise specifically disposed of~~  
25 ~~by the will, other than money and property used in trade or~~  
26 ~~business.~~ To be admissible under this section as evidence of  
27 the intended disposition, the writing must be signed by the  
28 testator and must describe the items and the devisees with  
29 reasonable certainty. The writing ~~may be referred to as one~~  
30 ~~in existence at the time of the testator's death.~~ It may be  
31 prepared before or after the execution of the will. It may be

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1 altered by the testator after its preparation. It may be a  
2 writing that has no significance apart from its effect upon  
3 the dispositions made by the will. If more than one otherwise  
4 effective writing exists, then, to the extent of any conflict  
5 among the writings, the provisions of the most recent writing  
6 revoke the inconsistent provisions of each prior writing.

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

9 732.6005 Rules of construction and intention.--

10 (1) The intention of the testator as expressed in the  
11 ~~his or her~~ will controls the legal effect of the testator's  
12 dispositions. The rules of construction expressed in this  
13 part shall apply unless a contrary intention is indicated by  
14 the will.

15 Section 50. Section 732.601, Florida Statutes, is  
16 amended to read:

17 732.601 Simultaneous Death Law.--Unless a contrary  
18 intention appears in the governing instrument:

19 (1) When title to property or its devolution depends  
20 on priority of death and there is insufficient evidence that  
21 the persons have died otherwise than simultaneously, the  
22 property of each person shall be disposed of as if that person  
23 ~~he or she had survived, except as provided otherwise in this~~  
24 ~~law.~~

25 (2) When two or more beneficiaries are designated to  
26 take successively by reason of survivorship under another  
27 person's disposition of property and there is insufficient  
28 evidence that the beneficiaries died otherwise than  
29 simultaneously, the property thus disposed of shall be divided  
30 into as many equal parts as there are successive beneficiaries  
31 and the parts shall be distributed to those who would have

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1 taken if each designated beneficiary had survived.

2 (3) When there is insufficient evidence that two joint  
3 tenants or tenants by the entirety died otherwise than  
4 simultaneously, the property so held shall be distributed  
5 one-half as if one had survived and one-half as if the other  
6 had survived. If there are more than two joint tenants and all  
7 of them so died, the property thus distributed shall be in the  
8 proportion that one bears to the ~~whole~~ number of joint  
9 tenants.

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

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

19 Section 51. Section 732.603, Florida Statutes, is  
20 amended to read:

21 732.603 Antilapse; deceased devisee; class  
22 gifts.--Unless a contrary intention appears in the will:

23 (1) If a devisee or a beneficiary of a trust created  
24 by a will who is a grandparent, or a lineal descendant of a  
25 grandparent, of the testator:

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

28 (b) Fails to survive the testator, or

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

31

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1 then the descendants of the devisee or beneficiary take per  
2 stirpes in place of the deceased devisee or beneficiary. A  
3 person who would have been a devisee under a class gift if  
4 that person ~~he or she~~ had survived the testator shall be a  
5 devisee for purposes of this section whether that person died  
6 ~~his or her death occurred~~ before or after the execution of the  
7 will.

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

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

13 (b) Fails to survive the testator, or

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

16  
17 then the testamentary disposition to the devisee or  
18 beneficiary shall lapse unless an intention to substitute  
19 another ~~in his or her place~~ appears in the will.

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

22 732.604 Failure of testamentary provision.--

23 (2) Except as provided in s. 732.603, if the residue  
24 is devised to two or more persons and the devise to ~~share of~~  
25 one of the residuary devisees fails for any reason, that  
26 devise ~~his or her share~~ passes to the other residuary devisee,  
27 or to the other residuary devisees in proportion to their  
28 interests in the residue.

29 Section 53. Section 732.605, Florida Statutes, is  
30 amended to read:

31 732.605 Change in securities; accessions;



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1 nonademption.--

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

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

7 (b) Any additional or other securities of the same  
8 entity owned by the testator because of action initiated by  
9 the entity, excluding any acquired by exercise of purchase  
10 options.

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

14 (d) Securities of the same entity acquired as a result  
15 of a plan of reinvestment.

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

20 Section 54. Subsection (1) and paragraph (d) of  
21 subsection (2) of section 732.606, Florida Statutes, are  
22 amended to read:

23 732.606 Nonademption of specific devises in certain  
24 cases; sale by guardian of the property; unpaid proceeds of  
25 sale, condemnation, or insurance.--

26 (1) If specifically devised property is sold by a  
27 guardian of the property ~~for the care and maintenance of the~~  
28 ~~ward~~ or if a condemnation award or insurance proceeds are paid  
29 to a guardian of the property ~~as a result of condemnation,~~  
30 ~~fire, or casualty,~~ the specific devisee has the right to a  
31 general pecuniary devise equal to the net sale price, the

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1 condemnation award, or the insurance proceeds. This  
2 subsection does not apply if, subsequent to the sale,  
3 condemnation, or casualty, it is adjudicated that the  
4 disability of the testator has ceased and the testator  
5 survives the adjudication by 1 year. The right of the specific  
6 devisee under this subsection is reduced by any right  
7 described in ~~he or she has under~~ subsection (2).

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

10 (d) Property owned by the testator at ~~his or her~~ death  
11 as a result of foreclosure, or obtained instead of  
12 foreclosure, of the security for the specifically devised  
13 obligation.

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

16 732.701 Agreements concerning succession.--

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

27 Section 56. Section 732.702, Florida Statutes, is  
28 amended to read:

29 732.702 Waiver of spousal ~~right to elect and of other~~  
30 rights.--

31 (1) The rights ~~right of election~~ of a surviving

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

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

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

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

11           732.801 Disclaimer of interests in property passing by  
12 will or intestate succession or under certain powers of  
13 appointment.--

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

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

18           1. By intestate succession or devise.

19           2. Under descent of homestead, exempt property, or  
20 family allowance or under s. 222.13.

21           3. Through exercise or nonexercise of a power of  
22 appointment exercisable by will.

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

25           5. As beneficiary of a testamentary trust.

26           6. As a beneficiary of a testamentary gift to any  
27 nontestamentary trust.

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

29           8. By succession in any manner described in this  
30 subsection to a disclaimed interest.

31           9. In any manner not specifically enumerated herein

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1 under a testamentary instrument.

2 (b) Disclaimer may be made for a minor, incompetent,  
3 incapacitated person, or deceased beneficiary by the guardian  
4 or personal representative if the court having jurisdiction of  
5 the estate of the minor, incompetent, incapacitated person, or  
6 deceased beneficiary upon petition finds that the disclaimer:

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

10 2. Is not detrimental to the best interests of the  
11 beneficiary.

12

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

20 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

21 (a) Unless the decedent or a donee of a power of  
22 appointment has otherwise provided by will or other  
23 appropriate instrument with reference to the possibility of a  
24 disclaimer by the beneficiary, the interest disclaimed shall  
25 descend, be distributed, or otherwise be disposed of in the  
26 same manner as if the disclaimant had died immediately  
27 preceding the death or other event that caused ~~him or her to~~  
28 ~~become finally ascertained as a beneficiary and the~~  
29 disclaimant's interest to become indefeasibly fixed both in  
30 quality and quantity. The disclaimer shall relate to that  
31 date for all purposes, whether recorded before or after the

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1 death or other event. An interest in property disclaimed  
2 shall never vest in the disclaimant. If the provisions of s.  
3 732.603 would have been applicable had the disclaimant in fact  
4 died immediately preceding the death or other event, they  
5 shall be applicable to the disclaimed interest.

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

14 (4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER  
15 INSTRUMENTS.--

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

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

27 (c) The person disclaiming shall deliver or mail a  
28 copy of the disclaimer instrument to the personal  
29 representative, trustee, or other person having legal title  
30 to, or possession of, the property in which the disclaimed  
31 interest exists. No representative, trustee, or other person

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1 shall be liable for any otherwise proper distribution or other  
2 disposition made without actual notice of the disclaimer or,  
3 if the disclaimer is waived or barred ~~as hereinafter provided,~~  
4 for any otherwise proper distribution or other disposition  
5 made in reliance on the disclaimer, if the distribution or  
6 disposition is made without actual notice of the facts  
7 constituting the waiver or bar of ~~barring~~ the right to  
8 disclaim.

9 (5) TIME FOR RECORDING DISCLAIMER.--To be effective a  
10 disclaimer shall be recorded at any time after the creation of  
11 the interest, but in any event within 9 months after the event  
12 giving rise to the right to disclaim, including the death of  
13 the decedent; or, if the disclaimant is not finally  
14 ascertained as a beneficiary or the disclaimant's interest has  
15 not become indefeasibly fixed both in quality and quantity at  
16 the death of the decedent, then the disclaimer shall be  
17 recorded not later than 6 months after the event that would  
18 cause the ~~him or her to become finally ascertained and his or~~  
19 ~~her~~ interest to become indefeasibly fixed both in quality and  
20 quantity. However, a disclaimer may be effective if recorded  
21 at any time after the creation of the interest, upon the  
22 written consent of all interested parties as provided in s.  
23 731.302.

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

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

29 1. Making a voluntary assignment or transfer of, a  
30 contract to assign or transfer, or an encumbrance of, an  
31 interest in real or personal property.

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

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

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

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

17           Section 58. Section 732.804, Florida Statutes, is  
18 amended to read:

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

30           Section 59. Section 732.901, Florida Statutes, is  
31 amended to read:



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1           732.901 Production of wills.--

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

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

19           Section 60. Section 732.910, Florida Statutes, is  
20 renumbered as section 765.510, Florida Statutes.

21           Section 61. Section 732.911, Florida Statutes, is  
22 renumbered as section 765.511, Florida Statutes.

23           Section 62. Section 732.912, Florida Statutes, is  
24 renumbered as section 765.512, Florida Statutes, and amended  
25 to read:

26           765.512 ~~732.912~~ Persons who may make an anatomical  
27 gift.--

28           (1) Any person who may make a will may give all or  
29 part of his or her body for any purpose specified in s.  
30 765.510 ~~732.910~~, the gift to take effect upon death. An  
31 anatomical gift made by an adult donor and not revoked by the

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1 donor as provided in s. 765.516 ~~732.916~~ is irrevocable and  
2 does not require the consent or concurrence of any person  
3 after the donor's death.

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

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

- 25 (a) The spouse of the decedent;  
26 (b) An adult son or daughter of the decedent;  
27 (c) Either parent of the decedent;  
28 (d) An adult brother or sister of the decedent;  
29 (e) A grandparent of the decedent;  
30 (f) A guardian of the person of the decedent at the  
31 time of his or her death; or

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1 (g) A representative ad litem who shall be appointed  
2 by a court of competent jurisdiction forthwith upon a petition  
3 heard ex parte filed by any person, which representative ad  
4 litem shall ascertain that no person of higher priority exists  
5 who objects to the gift of all or any part of the decedent's  
6 body and that no evidence exists of the decedent's having made  
7 a communication expressing a desire that his or her body or  
8 body parts not be donated upon death;

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

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

22 (5) The person authorized by subsection (3) may make  
23 the gift after the decedent's death or immediately before the  
24 decedent's death.

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

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

31 Section 63. Section 732.913, Florida Statutes, is

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1 renumbered as section 765.513, Florida Statutes.

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

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

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

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

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

27  
28 UNIFORM DONOR CARD

29  
30 The undersigned hereby makes this anatomical gift, if  
31 medically acceptable, to take effect on death. The words and

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1 marks below indicate my desires:

2 I give:

3 (a) .... any needed organs or parts;

4 (b) .... only the following organs or parts

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

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

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

9 Limitations or special wishes, if any:

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

11

12 Signed by the donor and the following witnesses in the  
13 presence of each other:

14

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

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

17

18 ...(Witness)... ...(Witness)...

19 ...(Address)... ...(Address)...

20

21 (3) The gift may be made to a donee specified by name.  
22 If the donee is not specified by name, the gift may be  
23 accepted by the attending physician as donee upon or following  
24 the donor's death. If the gift is made to a specified donee  
25 who is not available at the time and place of death, the  
26 attending physician may accept the gift as donee upon or  
27 following death in the absence of any expressed indication  
28 that the donor desired otherwise. However, the Legislature  
29 declares that the public policy of this state prohibits  
30 restrictions on the possible recipients of an anatomical gift  
31 on the basis of race, color, religion, sex, national origin,

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

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

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

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

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

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

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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

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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 not participate in the procedures for removing or



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1 transplanting a part.

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

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

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

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

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

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

31 Section 70. Section 732.919, Florida Statutes, is

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1 renumbered as section 765.519, Florida Statutes.

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

5 765.521 ~~732.921~~ Donations as part of driver license or  
6 identification card process.--

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

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

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

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

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

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

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

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

25 765.522 ~~732.922~~ Duty of certain hospital  
26 administrators; liability of hospital administrators, organ  
27 procurement organizations, eye banks, and tissue banks.--

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

31 (2) Where, based on accepted medical standards, a

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- 1 hospital patient is a suitable candidate for organ or tissue  
2 donation, the hospital administrator or the hospital  
3 administrator's designee shall, at or near the time of death,  
4 access the organ and tissue donor registry created by s.  
5 765.515(4)~~732.915(4)~~ to ascertain the existence of a donor  
6 card or document executed by the decedent. In the absence of a  
7 donor card, organ donation sticker or organ donation imprint  
8 on a driver's license, or other properly executed document,  
9 the hospital administrator or designee shall request:
- 10 (a) The patient's health care surrogate, as permitted  
11 in s. 765.512(2)~~732.912(2)~~; or
- 12 (b) If the patient does not have a surrogate, or the  
13 surrogate is not reasonably available, any of the persons  
14 specified in s. 765.512(3)~~732.912(3)~~, in the order and manner  
15 of priority stated in s. 765.512(3)~~732.912(3)~~,  
16  
17 to consent to the gift of all or any part of the decedent's  
18 body for any purpose specified in this part. Except as  
19 provided in s. 765.512 ~~732.912~~, in the absence of actual  
20 notice of opposition, consent need only be obtained from the  
21 person or persons in the highest priority class reasonably  
22 available.
- 23 (3) A gift made pursuant to a request required by this  
24 section shall be executed pursuant to s. 765.514 ~~732.914~~.
- 25 (4) The Agency for Health Care Administration shall  
26 establish rules and guidelines concerning the education of  
27 individuals who may be designated to perform the request and  
28 the procedures to be used in making the request. The agency  
29 is authorized to adopt rules concerning the documentation of  
30 the request, where such request is made.
- 31 (5) There shall be no civil or criminal liability

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1 against any organ procurement organization, eye bank, or  
2 tissue bank certified under s. 381.6022, or against any  
3 hospital or hospital administrator or designee, when complying  
4 with the provisions of this part and the rules of the Agency  
5 for Health Care Administration or when, in the exercise of  
6 reasonable care, a request for organ donation is inappropriate  
7 and the gift is not made according to this part and the rules  
8 of the Agency for Health Care Administration.

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

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

27 381.004 HIV testing.--

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

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

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- 1           1. When testing for sexually transmissible diseases is  
2 required by state or federal law, or by rule including the  
3 following situations:
- 4           a. HIV testing pursuant to s. 796.08 of persons  
5 convicted of prostitution or of procuring another to commit  
6 prostitution.
- 7           b. Testing for HIV by a medical examiner in accordance  
8 with s. 406.11.
- 9           2. Those exceptions provided for blood, plasma,  
10 organs, skin, semen, or other human tissue pursuant to s.  
11 381.0041.
- 12           3. For the performance of an HIV-related test by  
13 licensed medical personnel in bona fide medical emergencies  
14 when the test results are necessary for medical diagnostic  
15 purposes to provide appropriate emergency care or treatment to  
16 the person being tested and the patient is unable to consent,  
17 as supported by documentation in the medical record.  
18 Notification of test results in accordance with paragraph (c)  
19 is required.
- 20           4. For the performance of an HIV-related test by  
21 licensed medical personnel for medical diagnosis of acute  
22 illness where, in the opinion of the attending physician,  
23 obtaining informed consent would be detrimental to the  
24 patient, as supported by documentation in the medical record,  
25 and the test results are necessary for medical diagnostic  
26 purposes to provide appropriate care or treatment to the  
27 person being tested. Notification of test results in  
28 accordance with paragraph (c) is required if it would not be  
29 detrimental to the patient. This subparagraph does not  
30 authorize the routine testing of patients for HIV infection  
31 without informed consent.

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

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

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

13           8. For epidemiological research pursuant to s.  
14 381.0032, for research consistent with institutional review  
15 boards created by 45 C.F.R. part 46, or for the performance of  
16 an HIV-related test for the purpose of research, if the  
17 testing is performed in a manner by which the identity of the  
18 test subject is not known and may not be retrieved by the  
19 researcher.

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

24           10. For the performance of an HIV test upon an  
25 individual who comes into contact with medical personnel in  
26 such a way that a significant exposure has occurred during the  
27 course of employment or within the scope of practice and where  
28 a blood sample is available that was taken from that  
29 individual voluntarily by medical personnel for other  
30 purposes. The term "medical personnel" includes a licensed or  
31 certified health care professional; an employee of a health

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

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

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

30 c. Costs of any HIV test of a blood sample performed  
31 with or without the consent of the individual, as provided in



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

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

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

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

29 11. For the performance of an HIV test upon an  
30 individual who comes into contact with medical personnel in  
31 such a way that a significant exposure has occurred during the

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

12 a. An individual who is capable of providing consent  
13 shall be requested to consent to an HIV test prior to the  
14 testing. The individual's refusal to consent, and all  
15 information concerning the performance of an HIV test and its  
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. HIV testing shall be conducted only after a  
20 licensed physician documents, in the medical record of the  
21 medical personnel or nonmedical personnel, that there has been  
22 a significant exposure and that, in the physician's medical  
23 judgment, the information is medically necessary to determine  
24 the course of treatment for the medical personnel or  
25 nonmedical personnel.

26 c. Costs of any HIV test performed with or without the  
27 consent of the individual, as provided in this subparagraph,  
28 shall be borne by the medical personnel or the employer of the  
29 medical personnel or nonmedical personnel. However, costs of  
30 testing or treatment not directly related to the initial HIV  
31 tests or costs of subsequent testing or treatment shall not be

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1 borne by the medical personnel or the employer of the medical  
2 personnel or nonmedical personnel.

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

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

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

27 12. For the performance of an HIV test by the medical  
28 examiner or attending physician upon an individual who expired  
29 or could not be resuscitated while receiving emergency medical  
30 assistance or care and who was the source of a significant  
31 exposure to medical or nonmedical personnel providing such

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1 assistance or care.

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

9 b. Costs of any HIV test performed under this  
10 subparagraph may not be charged to the deceased or to the  
11 family of the deceased person.

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

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

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

28 14. For the performance of HIV testing conducted to  
29 monitor the clinical progress of a patient previously  
30 diagnosed to be HIV positive.

31 15. For the performance of repeated HIV testing

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1 conducted to monitor possible conversion from a significant  
2 exposure.

3 Section 77. Paragraph (c) of subsection (2) of section  
4 381.0041, Florida Statutes, is amended to read:

5 381.0041 Donation and transfer of human tissue;  
6 testing requirements.--

7 (2) Notwithstanding the provisions of subsection (1),  
8 written, informed consent to perform testing shall not be  
9 required:

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

13 Section 78. Section 733.101, Florida Statutes, is  
14 amended to read:

15 733.101 Venue of probate proceedings.--

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

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

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

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

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

29 (3) Whenever a ~~When any~~ proceeding is filed laying  
30 venue in an improper ~~the wrong~~ county, the court may transfer  
31 the action in the same manner as provided in the Florida Rules

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1 of Civil Procedure. Any action taken by the court or the  
2 parties before the transfer is not affected by ~~because of~~ the  
3 improper venue.

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

6 733.103 Effect of probate.--

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

13 Section 80. Section 733.104, Florida Statutes, is  
14 amended to read:

15 733.104 Suspension of statutes of limitation in favor  
16 of the personal representative.--

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

25 (2) If a person against whom a cause of action exists  
26 dies before the expiration of the time limited for  
27 commencement of the action and the cause of action survives,  
28 if a claim is timely filed ~~shall be filed on the cause of~~  
29 ~~action, and it shall then proceed as other claims against the~~  
30 ~~estate, notwithstanding the expiration of the time limited for~~  
31 commencement of the action shall not apply.

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1           Section 81. Section 733.105, Florida Statutes, is  
2 amended to read:

3           733.105 Determination of beneficiaries.--

4           (1) When property passes by intestate succession or  
5 ~~under a will to a person not sufficiently identified in the~~  
6 ~~will is unclear and there is the personal representative is in~~  
7 doubt about:

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

10           (b) The shares and amounts that any person is entitled  
11 to receive,

12

13 any interested person the personal representative may petition  
14 the court to determine beneficiaries or their shares file a  
15 ~~petition setting forth the names, residences, and post office~~  
16 ~~addresses of all persons in interest, except creditors of the~~  
17 ~~decedent, so far as known or ascertainable by diligent search~~  
18 ~~and inquiry, and the nature of their respective interests,~~  
19 ~~designating those who are believed by the personal~~  
20 ~~representative to be minors or incompetents and stating~~  
21 ~~whether those so designated are under legal guardianship in~~  
22 ~~this state. If the personal representative believes that~~  
23 ~~there are, or may be, persons whose names are not known to him~~  
24 ~~or her who have claims against, or interest in, the estate as~~  
25 ~~heirs or devisees, the petition shall so state.~~

26           (2) ~~After formal notice and hearing, the court shall~~  
27 ~~enter an order determining the heirs or devisees or the shares~~  
28 ~~and amounts they are entitled to receive, or both. Any~~  
29 personal representative who makes distribution or takes any  
30 other action pursuant to an the order determining  
31 beneficiaries shall be fully protected.

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

11           Section 82. Subsections (2), (3), and (4) of section  
12 733.106, Florida Statutes, are amended to read:

13           733.106 Costs and attorney's attorney fees.--

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

21           (3) Any attorney who has rendered services to an  
22 estate may be awarded reasonable compensation from the estate  
23 ~~apply for an order awarding attorney fees, and after informal~~  
24 ~~notice to the personal representative and all persons bearing~~  
25 ~~the impact of the payment the court shall enter its order on~~  
26 ~~the petition~~.

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

30           Section 83. Section 733.107, Florida Statutes, is  
31 amended to read:



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1           733.107 Burden of proof in contests.--In all  
2 proceedings contesting the validity of a will, the burden  
3 shall be upon the proponent of the will to establish prima  
4 facie its formal execution and attestation. Thereafter, the  
5 contestant shall have the burden of establishing the grounds  
6 on which the probate of the will is opposed or revocation is  
7 sought.

8           Section 84. Section 733.109, Florida Statutes, is  
9 amended to read:

10           733.109 Revocation of probate.--

11           (1) A proceeding to revoke the probate of a will shall  
12 be brought in the court having jurisdiction over the  
13 administration.Any interested person, including a beneficiary  
14 under a prior will, unless ~~except those~~ barred under s.  
15 733.212 or s. 733.2123, may commence the proceeding, before  
16 final discharge of the personal representative, ~~petition the~~  
17 ~~court in which the will was admitted to probate for revocation~~  
18 ~~of probate.~~

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

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

25           (2) Pending the determination of any petition for  
26 revocation of probate, the personal representative shall  
27 proceed with the administration of the estate as if no  
28 revocation proceeding had been commenced, except that no  
29 distribution may be made to beneficiaries ~~devisees~~ in  
30 contravention of the rights of those who, but for the will,  
31 would be entitled to the property disposed of.

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

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

7           733.201 Proof of wills.--

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

19           Section 86. Section 733.202, Florida Statutes, is  
20 amended to read:

21           733.202 Petition.--Any interested person may petition  
22 for administration.

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

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

26           ~~(a) A statement of the interest of the petitioner, the~~  
27 ~~petitioner's name and address, and the name and office address~~  
28 ~~of his or her attorney.~~

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

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

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1 ~~petition or that an authenticated copy of a will probated in~~  
2 ~~another jurisdiction accompanies the petition.~~

3 Section 87. Section 733.203, Florida Statutes, is  
4 repealed:

5 ~~733.203 Notice; when required.--~~

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

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

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

20 733.204 Probate of a will written in a foreign  
21 language.--

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

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1 ~~having done~~ so.

2 Section 89. Section 733.205, Florida Statutes, is  
3 amended to read:

4 733.205 Probate of notarial will.--

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

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

18 (3) Any interested person ~~notified~~ may oppose the  
19 probate of such a notarial will or may petition for revocation  
20 of probate of such a notarial will, as in the ~~case of~~ original  
21 probate of a will in this state.

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

24 733.206 Probate of will of resident after foreign  
25 probate.--

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

30 Section 91. Section 733.207, Florida Statutes, is  
31 amended to read:

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1           733.207 Establishment and probate of lost or destroyed  
2 will.--Any interested person may establish the full and  
3 precise terms of a lost or destroyed will and offer the will  
4 for probate.

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

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

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

22           Section 92. Section 733.208, Florida Statutes, is  
23 amended to read:

24           733.208 Discovery of later will.--On the discovery of  
25 a later will or codicil ~~expressly or impliedly revoking the~~  
26 ~~probated will in whole or in part, pending or during~~  
27 ~~administration, any interested person may petition to revoke~~  
28 ~~the probate of the earlier will or to probate the later will~~  
29 ~~or codicil offer the later will for probate. The proceedings~~  
30 ~~shall be similar to those for revocation of probate. No later~~  
31 will or codicil may be offered after the testate or intestate

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1 estate has been completely administered and the personal  
2 representative discharged closing of the estate.

3 Section 93. Section 733.209, Florida Statutes, is  
4 amended to read:

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

14 Section 94. Section 733.212, Florida Statutes, is  
15 amended to read:

16 733.212 Notice of administration; filing of objections  
17 ~~and claims.--~~

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

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

29 ~~(b) Any objection by an interested person on whom~~  
30 ~~notice was served that challenges the validity of the will,~~  
31 ~~the qualifications of the personal representative, venue, or~~

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1 ~~jurisdiction of the court within the later of 3 months after~~  
2 ~~the date of the first publication of the notice or 30 days~~  
3 ~~after the date of service of a copy of the notice on the~~  
4 ~~objecting person.~~

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

10 ~~(1)(3)~~ The personal representative shall promptly  
11 serve a copy of the notice of administration on the following  
12 persons who are known to the personal representative:

13 (a) The decedent's surviving spouse;

14 (b) Beneficiaries; ~~and~~

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

16 733.707(3); and, of which the decedent was grantor

17 (d) Persons who may be entitled to exempt property  
18

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

24 (2) The notice shall state the name of the decedent,  
25 the file number of the estate, the designation and address of  
26 the court in which the proceedings are pending, whether the  
27 estate is testate or intestate, and, if testate, the date of  
28 the will and any codicils, the name and address of the  
29 personal representative, and the name and address of the  
30 personal representative's attorney. The notice shall state  
31 that interested persons are required to file with the court



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1 any objection by an interested person on whom the notice was  
2 served that challenges the validity of the will, the  
3 qualifications of the personal representative, venue, or  
4 jurisdiction of the court within 3 months after the date of  
5 service of a copy of the notice of administration on the  
6 objecting person.

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

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

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1 ~~timely proof of claim if the personal representative notified~~  
2 ~~the creditor of that listing.~~

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

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

15       ~~(5) Objections under paragraph (1)(b), by persons on~~  
16 ~~whom notice was served, that are not filed within the later of~~  
17 ~~3 months after the date of first publication of the notice or~~  
18 ~~30 days after the date of service of a copy of the notice on~~  
19 ~~the objecting person are forever barred.~~

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

25       Section 95. Section 733.2121, Florida Statutes, is  
26 created to read:

27       733.2121 Notice to creditors; filing of claims.--

28       (1) Unless creditors' claims are otherwise barred by  
29 s. 733.710, the personal representative shall promptly publish  
30 a notice to creditors. The notice shall contain the name of  
31 the decedent, the file number of the estate, the designation

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1 and address of the court in which the proceedings are pending,  
2 the name and address of the personal representative, the name  
3 and address of the personal representative's attorney, and the  
4 date of first publication. The notice shall state that  
5 creditors must file claims against the estate with the court  
6 within the time periods set forth in ss. 733.702 and 733.710,  
7 or be forever barred.

8 (2) Publication shall be once a week for 2 consecutive  
9 weeks, in a newspaper published in the county where the estate  
10 is administered or, if there is no newspaper published in the  
11 county, in a newspaper of general circulation in that county.

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

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

28 (c) If the personal representative in good faith fails  
29 to give notice required by this section, the personal  
30 representative is not liable to any person for the failure.  
31 Liability, if any, for the failure is on the estate.

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

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

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

14           Section 96. Section 733.2123, Florida Statutes, is  
15 amended to read:

16           733.2123 Adjudication before issuance of letters.--A  
17 petitioner may serve formal notice of the ~~his or her~~ petition  
18 for administration on interested persons. A copy of the will  
19 offered for ~~proposed to be admitted to~~ probate shall be  
20 attached to the notice. No person who is served with formal  
21 notice of the petition for administration prior to the  
22 issuance of letters or who has waived notice may challenge the  
23 validity of the will, testacy of the decedent, qualifications  
24 of the personal representative, venue, or jurisdiction of the  
25 court, except in ~~connection with~~ the proceedings before  
26 issuance of letters.

27           Section 97. Section 733.213, Florida Statutes, is  
28 amended to read:

29           733.213 Probate as prerequisite to judicial ~~petition~~  
30 ~~for~~ construction of will.--A will may not be construed until  
31 it has been admitted to probate ~~No pleading seeking~~

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1 ~~construction of a will may be maintained until the will has~~  
2 ~~first been probated.~~

3 Section 98. Section 733.301, Florida Statutes, is  
4 amended to read:

5 733.301 Preference in appointment of personal  
6 representative.--

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

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

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

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

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

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

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

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

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

25 (2)~~(3)~~ A guardian of the property of a ward who if  
26 competent would be entitled to appointment as, or to select,  
27 the ~~a~~ personal representative may exercise the right to select  
28 the personal representative.

29 (3)~~(4)~~ In either a testate or an intestate estate, if  
30 no application is made by any of the persons described ~~named~~  
31 in subsection (1) ~~or subsection (2)~~, the court shall appoint a

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1 capable person; but no person may be appointed under this  
2 subsection:

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

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

7 ~~(4)(5)~~ After letters have been granted in either a  
8 testate or an intestate estate, if a person who was entitled  
9 to, and has not waived, preference over the person appointed  
10 at the time of the ~~his or her~~ appointment and on whom formal  
11 notice was not served seeks the appointment, the letters  
12 granted may be revoked and the person entitled to preference  
13 may have letters granted ~~to him or her~~ after formal notice and  
14 hearing.

15 ~~(5)(6)~~ After letters have been granted in either a  
16 testate or an intestate estate, if any will is subsequently  
17 admitted to probate the letters shall be revoked and new  
18 letters granted ~~as provided in subsection (1)~~.

19 Section 99. Section 733.302, Florida Statutes, is  
20 amended to read:

21 733.302 Who may be appointed personal  
22 representative.--Subject to the limitations in this part, any  
23 person who is sui juris and ~~who~~ is a resident of Florida at  
24 the time of the death of the person whose estate is to be  
25 administered ~~he or she seeks to administer~~ is qualified to act  
26 as personal representative in Florida. ~~A person who has been~~  
27 ~~convicted of a felony or who, from sickness, intemperance, or~~  
28 ~~want of understanding, is incompetent to discharge the duties~~  
29 ~~of a personal representative is not qualified.~~

30 Section 100. Subsections (1) and (2) of section  
31 733.305, Florida Statutes, are amended to read:

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1           733.305 Trust companies and other corporations and  
2 associations.--

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

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

19           Section 101. Section 733.306, Florida Statutes, is  
20 amended to read:

21           733.306 Effect of appointment of debtor.--The  
22 appointment of a debtor as personal representative shall not  
23 extinguish the debt due ~~to~~ the decedent. ~~This section shall~~  
24 ~~not prevent a testator from releasing a debtor by will.~~

25           Section 102. Section 733.307, Florida Statutes, is  
26 amended to read:

27           733.307 Succession of administration.--~~The~~ ~~No~~ personal  
28 representative of the estate of a deceased personal  
29 representative is not ~~as such shall be~~ authorized to  
30 administer the estate of the first decedent. On the death of  
31 a ~~the~~ sole or surviving personal representative, the court

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1 shall appoint a successor personal representative to complete  
2 the administration of the estate.

3 Section 103. Section 733.308, Florida Statutes, is  
4 amended to read:

5 733.308 Administrator ad litem.--When ~~it is necessary~~  
6 ~~that~~ an estate must be represented and ~~the~~ ~~there is no~~  
7 personal representative is unable to do so of the estate, the  
8 court shall appoint an administrator ad litem without bond to  
9 represent the estate in that ~~for that particular~~ proceeding.

10 The fact that the personal representative is seeking  
11 reimbursement for claims against the decedent ~~paid by the~~  
12 ~~personal representative~~ does not require appointment of an  
13 administrator ad litem.

14 Section 104. Section 733.309, Florida Statutes, is  
15 amended to read:

16 733.309 Executor de son tort.--No person shall be  
17 liable to a creditor of a decedent as executor de son tort,  
18 but any person taking, converting, or intermeddling with the  
19 property of a decedent shall be liable to the personal  
20 representative or curator, when appointed, for the value of  
21 all the property so taken or converted and for all damages to  
22 the estate caused by the ~~his or her~~ wrongful action. This  
23 section shall not be construed to prevent a creditor of a  
24 decedent from suing anyone in possession of property  
25 fraudulently conveyed by the decedent to set aside the  
26 fraudulent conveyance.

27 Section 105. Section 733.310, Florida Statutes, is  
28 created to read:

29 733.310 Personal representative not qualified.--Any  
30 time a personal representative knows or should have known that  
31 he or she would not be qualified for appointment if



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1 application for appointment were then made, the personal  
2 representative shall promptly file and serve a notice setting  
3 forth the reasons. A personal representative who fails to  
4 comply with this section shall be personally liable for costs,  
5 including attorney's fees, incurred in any removal proceeding,  
6 if the personal representative is removed. This liability  
7 shall be cumulative to any other provided by law.

8 Section 106. Section 733.401, Florida Statutes, is  
9 repealed:

10 ~~733.401 Issuance of letters.--~~

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

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

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

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

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

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

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

26 Section 107. Section 733.402, Florida Statutes, is  
27 amended to read:

28 733.402 Bond of fiduciary ~~personal representative;~~  
29 when required; form.--

30 (1) Unless the bond requirement has been waived by the  
31 will or by the court ~~testator waived the requirement,~~ every

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1 fiduciary person to whom letters are granted shall execute and  
2 file a bond with surety, as defined in s. 45.011, to be  
3 approved by the clerk without a service fee. The bond shall be  
4 payable to the Governor and the Governor's successors in  
5 office, conditioned on the performance of all duties as  
6 personal representative according to law. The bond must be  
7 joint and several.

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

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

17 (4) On petition by any interested person or on the  
18 court's own motion, the court may waive the requirement of  
19 filing a bond, require a bond, increase or decrease the bond,  
20 or require additional surety.

21 Section 108. Section 733.403, Florida Statutes, is  
22 amended to read:

23 733.403 Amount of bond.--

24 ~~(1)~~ All bonds required by this part shall be in the  
25 penal sum that the court deems sufficient after consideration  
26 of the gross value of the estate, the relationship of the  
27 personal representative to the beneficiaries, exempt property  
28 and any family allowance, the type and nature of assets, known  
29 creditors, and liens and encumbrances on the assets.

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

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1 ~~filing a bond, require a personal representative or curator to~~  
2 ~~give bond, increase or decrease the bond, or require~~  
3 ~~additional surety.~~

4 Section 109. Section 733.404, Florida Statutes, is  
5 amended to read:

6 733.404 Liability of surety.--No surety for any  
7 personal representative or curator shall be charged beyond the  
8 value of the assets of an estate because of any omission or  
9 mistake in pleading or of false pleading of the personal  
10 representative or curator.

11 Section 110. Section 733.405, Florida Statutes, is  
12 amended to read:

13 733.405 Release of surety.--

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

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

24 (3) On hearing, the court shall enter an order  
25 prescribing the amount of the new bond for the fiduciary  
26 ~~personal representative or curator~~ and the date when the bond  
27 shall be filed. If the fiduciary principal fails to give the  
28 new bond, the fiduciary ~~he or she~~ shall be removed at once,  
29 and further proceedings shall be had as in cases of removal.

30 (4) The original surety ~~or sureties~~ shall remain ~~be~~  
31 liable in accordance with the terms of its original bond for

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1 all acts and omissions of the fiduciary that occur prior to  
2 ~~personal representative or surety until he or she has given~~  
3 the approval of the new surety and filing and approval of the  
4 ~~bond and, after the giving of the new bond, shall remain~~  
5 ~~liable for all the principal's acts to the time of the filing~~  
6 ~~and approval of the new bond.~~ The new surety shall be liable  
7 on its bond for the principal's acts only after the filing and  
8 approval of the new bond.

9 Section 111. Section 733.406, Florida Statutes, is  
10 amended to read:

11 733.406 Bond premium allowable as expense of  
12 administration or costs.--A personal representative Any  
13 ~~receiver, assignee, trustee, committee, guardian, executor or~~  
14 ~~administrator, or other fiduciary required by law to give bond~~  
15 shall pay the reasonable premium as an expense of  
16 administration as such, may include as part of his or her  
17 ~~lawful expense such reasonable sum paid such an insurer for~~  
18 ~~such suretyship not exceeding 1 percent per annum on the~~  
19 ~~amount of the bond, as the head of department, board, court,~~  
20 ~~judge or officer by whom, or the court or body in which, he or~~  
21 ~~she was appointed allows; and in all actions or proceedings~~  
22 ~~the party entitled to recover costs may include therein such~~  
23 ~~reasonable sum as may have been paid such an insurer executing~~  
24 ~~or guaranteeing any bond or undertaking therein.~~

25 Section 112. Section 733.501, Florida Statutes, is  
26 amended to read:

27 733.501 Curators.--

28 (1) When it is necessary, the court may appoint a  
29 curator after ~~and issue letters of curatorship to take charge~~  
30 ~~of the estate of a decedent until letters are granted. If the~~  
31 ~~person entitled to letters is a resident of the county where~~

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

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

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

21       ~~(2)(4)~~ Bond shall be required of the curator as the  
22 court deems necessary to secure the property. No bond shall  
23 be required of banks and trust companies as curators.

24       ~~(5) The curator shall file an inventory of the~~  
25 ~~property within 20 days. When the personal representative~~  
26 ~~qualifies, the curator shall immediately account and deliver~~  
27 ~~all assets of the estate in his or her hands to the personal~~  
28 ~~representative within 20 days, and in default shall be subject~~  
29 ~~to the provisions of this code relating to removal of personal~~  
30 ~~representatives.~~

31       ~~(3)(6)~~ Curators shall be allowed reasonable

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1 compensation for their services and the court may consider the  
2 provisions of s. 733.617.

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

5 Section 113. Section 733.502, Florida Statutes, is  
6 amended to read:

7 733.502 Resignation of personal representative.--A  
8 personal representative may resign ~~and be relieved of his or~~  
9 ~~her office. Notice of the petition shall be given to all~~  
10 ~~interested persons. Before relieving the personal~~  
11 ~~representative from his or her duties and obligations, the~~  
12 ~~court shall require the personal representative to file a true~~  
13 ~~and correct account of his or her administration and deliver~~  
14 ~~to his or her successor or to his or her joint personal~~  
15 ~~representative all of the property of the decedent and all~~  
16 ~~records concerning the estate. After notice to all interested~~  
17 persons, the court may accept the resignation and then revoke  
18 the letters of the resigning personal representative if the  
19 interests of the estate are not jeopardized by the  
20 resignation.The acceptance of the resignation, ~~after~~  
21 ~~compliance with this section,~~shall not exonerate the any  
22 personal representative or the his or her surety from  
23 liability ~~previously incurred.~~

24 Section 114. Section 733.503, Florida Statutes, is  
25 amended to read:

26 733.503 Appointment of successor upon  
27 resignation.--When the personal representative's resignation  
28 is accepted, the court shall appoint a personal representative  
29 or shall appoint a curator to serve until a successor personal  
30 representative is appointed ~~If there is no joint personal~~  
31 ~~representative, a successor must be appointed and qualified~~

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1 ~~before a personal representative may be relieved of his or her~~  
2 ~~duties and obligations as provided in s. 733.502.~~

3 Section 115. Section 733.5035, Florida Statutes, is  
4 created to read:

5 733.5035 Surrender of assets after resignation.--When  
6 the resignation has been accepted by the court, all estate  
7 assets, records, documents, papers, and other property of or  
8 concerning the estate in the resigning personal  
9 representative's possession or control shall immediately be  
10 surrendered to the successor fiduciary. The court may  
11 establish the conditions and specify the assets and records,  
12 if any, that the resigning personal representative may retain  
13 until the final accounting of the resigning personal  
14 representative has been approved.

15 Section 116. Section 733.5036, Florida Statutes, is  
16 created to read:

17 733.5036 Accounting and discharge following  
18 resignation.--

19 (1) A resigning personal representative shall file and  
20 serve a final accounting of the personal representative's  
21 administration.

22 (2) After determination and satisfaction of the  
23 liability, if any, of the resigning personal representative,  
24 after compensation of the personal representative and the  
25 attorney and other persons employed by the personal  
26 representative, and upon receipt of evidence that  
27 undistributed estate assets have been delivered to the  
28 successor fiduciary, the personal representative shall be  
29 discharged, the bond released, and the surety discharged.

30 Section 117. Section 733.504, Florida Statutes, is  
31 amended to read:

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1           733.504 ~~Causes of~~ Removal of personal representative;  
2 causes for removal.--A personal representative may be removed  
3 and the ~~his or her~~ letters revoked for any of the following  
4 causes, and the removal shall be in addition to any penalties  
5 prescribed by law:

6           (1) Adjudication of incompetency.

7           (2) Physical or mental incapacity rendering the  
8 personal representative incapable of the discharge of his or  
9 her duties.

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

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

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

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

16          (7) Conviction of a felony.

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

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

26          (10) Revocation of the probate of the decedent's will  
27 that authorized or designated the appointment of the ~~such~~  
28 personal representative.

29          (11) Removal of domicile from Florida, if domicile was  
30 a requirement of initial appointment ~~the personal~~  
31 ~~representative is no longer qualified under part III of this~~



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1 chapter.

2 (12) The personal representative would not now be  
3 entitled to appointment.

4 Section 118. Section 733.505, Florida Statutes, is  
5 amended to read:

6 733.505 Jurisdiction in removal proceedings.--A  
7 petition for removal shall be filed in the court having  
8 jurisdiction of the administration ~~issuing the letters.~~

9 Section 119. Section 733.506, Florida Statutes, is  
10 amended to read:

11 733.506 Proceedings for removal.--Proceedings for  
12 removal of a personal representative may be commenced by the  
13 court or upon the petition of an ~~by any~~ interested person ~~or~~  
14 ~~joint personal representative.~~ The court shall revoke the  
15 letters of a removed personal representative. The removal of a  
16 personal representative shall not exonerate the removed  
17 personal representative or the removed personal  
18 representative's surety from any liability.

19 Section 120. Section 733.5061, Florida Statutes, is  
20 created to read:

21 733.5061 Appointment of successor upon removal.--When  
22 a personal representative is removed, the court shall appoint  
23 a personal representative or shall appoint a curator to serve  
24 until a successor personal representative is appointed.

25 Section 121. Section 733.507, Florida Statutes, is  
26 repealed:

27 ~~733.507 Administration following resignation or~~  
28 ~~removal.--When a personal representative has resigned or is~~  
29 ~~removed and there is a remaining personal representative, no~~  
30 ~~other personal representative shall be appointed unless the~~  
31 ~~will otherwise requires. The remaining personal~~

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1 ~~representative, together with any successor personal~~  
2 ~~representative, if appointed, shall complete the~~  
3 ~~administration of the estate. If the resigned or removed~~  
4 ~~personal representative is a sole personal representative, the~~  
5 ~~court shall appoint a successor personal representative as~~  
6 ~~provided in s. 733.301.~~

7 Section 122. Section 733.508, Florida Statutes, is  
8 amended to read:

9 733.508 Accounting and discharge of removed personal  
10 representatives upon removal.--

11 (1) A removed personal representative shall file and  
12 serve a final accounting of that personal representative's  
13 administration.

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

24 Section 123. Section 733.509, Florida Statutes, is  
25 amended to read:

26 733.509 Surrender of assets upon removal.--Upon entry  
27 of an order removing a personal representative, the removed  
28 personal representative shall immediately deliver all estate  
29 assets, records, documents, papers, and other property of or  
30 concerning the estate in the removed personal representative's  
31 possession or control to the remaining personal representative

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1 ~~or successor fiduciary The removed personal representative~~  
2 ~~shall deliver to the remaining or successor personal~~  
3 ~~representative all of the property of the decedent and all~~  
4 ~~records, documents, papers, and other property of or~~  
5 ~~concerning the estate.~~

6 Section 124. Section 733.601, Florida Statutes, is  
7 amended to read:

8 733.601 Time of accrual of duties and powers.--The  
9 duties and powers of a personal representative commence upon  
10 ~~his or her~~ appointment. The powers of a personal  
11 representative relate back in time to give acts by the person  
12 appointed, occurring before appointment and beneficial to the  
13 estate, the same effect as those occurring after appointment  
14 ~~thereafter. Before issuance of letters, a person named~~  
15 ~~executor in a will may carry out written instructions of the~~  
16 ~~decedent relating to the decedent's body and funeral and~~  
17 ~~burial arrangements.~~A personal representative may ratify and  
18 accept acts on behalf of the estate done by others when the  
19 acts would have been proper for a personal representative.

20 Section 125. Section 733.602, Florida Statutes, is  
21 amended to read:

22 733.602 General duties.--

23 (1) A personal representative is a fiduciary who shall  
24 observe the standards of care applicable to trustees as  
25 described by s. 737.302. A personal representative is under a  
26 duty to settle and distribute the estate of the decedent in  
27 accordance with the terms of the decedent's will and this code  
28 as expeditiously and efficiently as is consistent with the  
29 best interests of the estate. A personal representative shall  
30 use the authority conferred ~~upon him or her~~ by this code, the  
31 authority in the will, if any, and the authority of any order

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1 ~~of the court in proceedings to which he or she is party, for~~  
2 ~~the best interests of interested persons, including creditors~~  
3 ~~as well as beneficiaries.~~

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

18 Section 126. Section 733.603, Florida Statutes, is  
19 amended to read:

20 733.603 Personal representative to proceed without  
21 court order.--A personal representative shall proceed  
22 expeditiously with the settlement and distribution of a  
23 decedent's estate and, except as otherwise specified by this  
24 code or ordered by the court, shall do so without  
25 adjudication, order, or direction of the court. A personal  
26 representative may invoke the jurisdiction of the court to  
27 resolve ~~judicial~~ questions concerning the estate or its  
28 administration.

29 Section 127. Section 733.604, Florida Statutes, is  
30 amended to read:

31 733.604 Inventory.--

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

14           (b) ~~The initial opening of any safe-deposit box of the~~  
15 ~~decedent must be conducted in the presence of an employee of~~  
16 ~~the institution where the box is located and the personal~~  
17 ~~representative. The inventory of the contents of the box also~~  
18 ~~must be conducted in the presence of the employee and the~~  
19 ~~personal representative, each of whom must verify the contents~~  
20 ~~of the box by signing a copy of the inventory. The personal~~  
21 ~~representative shall file the safe-deposit box inventory with~~  
22 ~~the court within 10 days after the box is opened.~~

23           (2) ~~The personal representative shall serve a copy of~~  
24 ~~the inventory on the Department of Revenue, as provided in s.~~  
25 ~~199.062(4), the surviving spouse, each heir at law in an~~  
26 ~~intestate estate, each residuary beneficiary in a testate~~  
27 ~~estate, and any other interested person who may request it,~~  
28 ~~and the personal representative shall file proof of such~~  
29 ~~service. The inventory shall be verified by the personal~~  
30 ~~representative.~~

31           (2)(3) If the personal representative learns of any

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1 property not included in the original inventory, or learns  
2 that the estimated value or description indicated in the  
3 original inventory for any item is erroneous or misleading,  
4 the personal representative he or she shall file a verified  
5 ~~prepare an~~ amended or supplementary inventory showing any the  
6 ~~estimated value of the new~~ items and their estimated value  
7 ~~item~~ at the date of the decedent's death, or the revised  
8 estimated value or description, ~~and the personal~~  
9 ~~representative shall serve a copy of the amended or~~  
10 ~~supplementary inventory on each person on whom a copy of the~~  
11 ~~inventory was served and shall file proof of such service.~~  
12 ~~The amended or supplementary inventory shall be verified by~~  
13 ~~the personal representative.~~

14 (3)(4) Upon written request to the personal  
15 representative, a beneficiary shall be furnished a written  
16 explanation of how the inventory value for an asset was  
17 determined, or, if an appraisal was obtained, a copy of the  
18 appraisal, as follows:

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

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

23 ~~Upon the written request of a beneficiary for any asset~~  
24 ~~specifically devised to that beneficiary, a beneficiary for~~  
25 ~~any asset received by that beneficiary in satisfaction of a~~  
26 ~~general devise, or a residuary beneficiary of a intestate~~  
27 ~~estate or an heir of an intestate estate, for any asset not~~  
28 ~~specifically devised, the personal representative shall~~  
29 ~~promptly furnish a written explanation of how the inventory~~  
30 ~~value for the asset was determined, including whether the~~  
31 ~~personal representative obtained an independent appraisal for~~

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1 ~~that asset and from whom the appraisal was obtained. The~~  
2 ~~personal representative must notify each beneficiary of that~~  
3 ~~beneficiary's rights under this subsection ~~the right to~~~~  
4 ~~request information regarding determination of the inventory~~  
5 ~~value of an asset. Neither a request nor the failure to~~  
6 ~~request information under this subsection affects any rights~~  
7 ~~of a beneficiary in subsequent proceedings concerning any~~  
8 ~~accounting of the personal representative or the propriety of~~  
9 ~~any action of the personal representative.~~

10 Section 128. Section 733.605, Florida Statutes, is  
11 repealed:

12 ~~733.605 Appraisers.--The personal representative may~~  
13 ~~employ a qualified and disinterested appraiser to assist him~~  
14 ~~or her in ascertaining the fair market value of any asset at~~  
15 ~~the date of the decedent's death or any other date that may be~~  
16 ~~appropriate, the value of which may be subject to reasonable~~  
17 ~~doubt. Different persons may be employed to appraise different~~  
18 ~~kinds of assets included in the estate.~~

19 Section 129. Section 733.6065, Florida Statutes, is  
20 created to read:

21 733.6065 Opening safe-deposit box.--

22 (1) Subject to the provisions of s. 655.936(2), the  
23 initial opening of the decedent's safe-deposit box shall be  
24 conducted in the presence of any two of the following persons:  
25 an employee of the institution where the box is located, the  
26 personal representative, or the personal representative's  
27 attorney of record. Each person who is present must verify  
28 the contents of the box by signing a copy of the inventory  
29 under penalties of perjury. The personal representative shall  
30 file the safe-deposit box inventory, together with a copy of  
31 the box entry record from a date which is 6 months prior to

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1 the date of death to the date of inventory, with the court  
2 within 10 days after the box is opened. Unless otherwise  
3 ordered by the court, this inventory and the attached box  
4 entry record is subject to inspection only by persons entitled  
5 to inspect an inventory under s. 733.604(1). The personal  
6 representative may remove the contents of the box.

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

12 Section 130. Section 733.607, Florida Statutes, is  
13 amended to read:

14 733.607 Possession of estate.--

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



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

10           Section 131. Section 733.608, Florida Statutes, is  
11 amended to read:

12           733.608 General power of the personal  
13 representative.--

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

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

22           ~~(b)(2)~~ To enforce contribution and equalize  
23 advancement.

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

25           (2) If property that reasonably appears to the  
26 personal representative to be protected homestead is not in  
27 the possession of a person who appears to have an interest in  
28 the property, the personal representative is authorized, but  
29 not required, to take possession of that property for the  
30 limited purpose of preserving, insuring, and protecting it for  
31 the heir or devisee, pending a determination of its homestead

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1 status. If the personal representative takes possession of  
2 that property, any rents and revenues may be collected by the  
3 personal representative for the account of the heir or  
4 devisee, but the personal representative shall have no duty to  
5 rent or otherwise make the property productive.

6 Section 132. Section 733.609, Florida Statutes, is  
7 amended to read:

8 733.609 Improper exercise of power; breach of  
9 fiduciary duty.--A personal representative's fiduciary duty is  
10 the same as the fiduciary duty of a trustee of an express  
11 trust and a personal representative is liable to interested  
12 persons for damage or loss resulting from the breach of this  
13 duty. In all actions for breach of fiduciary duty or  
14 challenging the exercise of or failure to exercise a personal  
15 representative's powers, the court shall award taxable costs  
16 as in chancery actions, including attorney's fees ~~if the~~  
17 ~~exercise of power concerning the estate is improper or in bad~~  
18 ~~faith, the personal representative is liable to interested~~  
19 ~~persons for damage or loss resulting from a breach of his or~~  
20 ~~her fiduciary duty to the same extent as a trustee of an~~  
21 ~~express trust. In all actions challenging the proper exercise~~  
22 ~~of a personal representative's powers, the court shall award~~  
23 ~~taxable costs as in chancery actions, including attorney's~~  
24 ~~fees.~~

25 Section 133. Section 733.610, Florida Statutes, is  
26 amended to read:

27 733.610 Sale, encumbrance or transaction involving  
28 conflict of interest.--Any sale or encumbrance to the personal  
29 representative or the personal representative's ~~his or her~~  
30 spouse, agent, or attorney, or any corporation or trust in  
31 which the personal representative has a substantial beneficial

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1 interest, or any transaction that is affected by a conflict of  
2 interest on the part of the personal representative, is  
3 voidable by any interested person except one who has consented  
4 after fair disclosure, unless:

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

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

9 Section 134. Section 733.611, Florida Statutes, is  
10 amended to read:

11 733.611 Persons dealing with the personal  
12 representative; protection.--Except as provided in s.  
13 733.613(1), a person who in good faith either assists or deals  
14 for value with a personal representative ~~or deals with him or~~  
15 ~~her for value~~ is protected as if the personal representative  
16 acted properly ~~exercised his or her power~~. The fact that a  
17 person knowingly deals with the personal representative does  
18 not ~~alone~~ require the person to inquire into the authority of  
19 the personal representative ~~existence of his or her power, the~~  
20 ~~limits on the power, or the propriety of its exercise~~. A  
21 person is not bound to see to the proper application of estate  
22 assets paid or delivered to the personal representative. This  
23 ~~The protection here expressed~~ extends to instances in which a  
24 procedural irregularity or jurisdictional defect occurred in  
25 proceedings leading to the issuance of letters, including a  
26 case in which the alleged decedent is alive. This protection  
27 is in addition to any protection afforded by ~~The protection~~  
28 ~~here expressed is not by substitution for that provided in~~  
29 comparable provisions of the laws relating to commercial  
30 transactions and laws simplifying transfers of securities by  
31 fiduciaries.

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1           Section 135. Section 733.612, Florida Statutes, is  
2 amended to read:

3           733.612 Transactions authorized for the personal  
4 representative; exceptions.--Except as otherwise provided by  
5 the will or court ~~by order of court~~, and subject to the  
6 priorities stated in s. 733.805, without court ~~order of court~~,  
7 a personal representative, acting reasonably for the benefit  
8 of the interested persons, may properly:

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

13           (2) Perform or ~~compromise, or, when proper, refuse to~~  
14 ~~perform performance of~~, the decedent's contracts. In  
15 performing the decedent's enforceable contracts ~~by the~~  
16 ~~decedent~~ to convey or lease real property, among other  
17 possible courses of action, the personal representative may:

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

21           (b) Deliver a deed in escrow, with directions that the  
22 proceeds, when paid in accordance with the escrow agreement,  
23 be paid as provided ~~to the distributees of the decedent, as~~  
24 ~~designated~~ in the escrow agreement.

25           (3) Receive assets from fiduciaries or other sources.

26           (4) Invest funds as provided in ss. 518.10-518.14,  
27 considering the amount to be invested, liquidity needs of the  
28 estate, and the time until distribution will be made ~~if funds~~  
29 ~~are not needed to meet debts and expenses currently payable~~  
30 ~~and are not immediately distributable, deposit or invest~~  
31 ~~liquid assets of the estate, including moneys received from~~

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1 ~~the sale of other assets, in federally insured~~  
2 ~~interest-bearing accounts, readily marketable secured loan~~  
3 ~~arrangements, or other prudent investments that would be~~  
4 ~~reasonable for use by trustees.~~

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

10 (6) Make ordinary or extraordinary repairs or  
11 alterations in buildings or other structures; demolish  
12 improvements; or erect new party walls or buildings.

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

16 (8) Enter into a lease or arrangement for exploration  
17 and removal of minerals or other natural resources or enter  
18 into a pooling or unitization agreement.

19 (9) Abandon property when it is valueless or so  
20 encumbered, or in a such condition, that it is of no benefit  
21 to the estate.

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

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

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

31 (13) Insure the assets of the estate against damage

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1 ~~or loss, and liability~~ and insure against personal and  
2 fiduciary liability ~~himself or herself against liability~~ to  
3 third persons.

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

7 (15) Extend, renew, or in any manner modify any  
8 obligation owing to the estate. If the personal representative  
9 holds a mortgage, security interest, or other lien upon  
10 property of another person, he or she may accept a conveyance  
11 or transfer of encumbered assets from the owner in  
12 satisfaction of the indebtedness secured by its lien instead  
13 of foreclosure.

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

16 (17) Sell or exercise stock subscription or conversion  
17 rights or consent, directly or through a committee or other  
18 agent, to the reorganization, consolidation, merger,  
19 dissolution, or liquidation of a corporation or other business  
20 enterprise.

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

23 (19) Employ persons, including, but not limited to,  
24 attorneys, accountants, auditors, appraisers, investment  
25 advisers, and others, even if they are one and the same as the  
26 personal representative or are associated with the personal  
27 representative, to advise or assist the personal  
28 representative in the performance of ~~his or her~~ administrative  
29 duties; act upon the recommendations of those ~~such~~ employed  
30 persons without independent investigation; and, instead of  
31 acting personally, employ one or more agents to perform any

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1 act of administration, whether or not discretionary. Any fees  
2 and compensation paid to a ~~any such~~ person who is the same as,  
3 associated with, or employed by, the personal representative  
4 shall be taken into consideration in determining the personal  
5 representative's compensation.

6 (20) Prosecute or defend claims or proceedings in any  
7 jurisdiction for the protection of the estate and of the  
8 personal representative ~~in the performance of his or her~~  
9 ~~duties~~.

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

14 (22) Continue any unincorporated business or venture  
15 in which the decedent was engaged at the time of ~~his or her~~  
16 death:

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

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

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

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

28 (25) Enter into agreements with the proper officer or  
29 department head, commissioner, or agent of any department of  
30 the government of the United States, waiving the statute of  
31 limitations concerning the assessment and collection of any

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1 federal tax or any deficiency in a federal tax.

2 (26) Make partial ~~part~~ distribution to the  
3 beneficiaries of any part of the estate not necessary to  
4 satisfy claims, expenses of administration, taxes, family  
5 allowance, exempt property, and an elective share, in  
6 accordance with the decedent's will or as authorized by  
7 operation of law.

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

10 Section 136. Section 733.6121, Florida Statutes, is  
11 amended to read:

12 733.6121 Powers of personal representatives conferred  
13 by this part in relation to environmental or human health laws  
14 affecting property subject to administration or to property  
15 subject to administration contaminated with hazardous or toxic  
16 substances; liability.--

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

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

24 (a) To inspect or investigate, or cause to be  
25 inspected or investigated, property subject to administration,  
26 including interests in sole proprietorships, partnerships, or  
27 corporations and any assets owned by ~~any~~ such a business  
28 entity for the purpose of determining compliance with an  
29 environmental law affecting that property or to respond to an  
30 actual or threatened violation of an environmental law  
31 affecting that property;



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

6 (c) To settle or compromise at any time any claim  
7 against the estate or the personal representative that may be  
8 asserted by a governmental body or private party which  
9 involves the alleged violation of an environmental law  
10 affecting property subject to administration over which the  
11 personal representative has responsibility;

12 (d) To disclaim any power granted by any document,  
13 statute, or rule of law which, in the sole judgment of the  
14 personal representative, could cause the personal  
15 representative to incur personal liability, or the estate to  
16 incur liability, under any environmental law;

17 (e) To decline to serve as a personal representative,  
18 or having undertaken to serve ~~as a personal representative~~, to  
19 resign at any time, if the personal representative believes  
20 that there is or could be a conflict of interest ~~in his or her~~  
21 ~~fiduciary capacity and in his or her individual capacity~~  
22 because of potential claims or liabilities that could be  
23 asserted ~~against it~~ on behalf of the estate by reason of the  
24 type or condition of the assets held; or

25 (f) To charge against the assets of the estate the  
26 cost of any inspection, investigation, review, abatement,  
27 response, cleanup, or remedial action considered reasonable by  
28 the personal representative ~~that this section authorizes the~~  
29 ~~personal representative to take~~; and, in the event of the  
30 closing or termination of the estate or the transfer of the  
31 estate property to another personal representative, to hold

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1 moneys sufficient to cover the cost of cleaning up any known  
2 environmental problem.

3 (3) A personal representative is not personally liable  
4 to any beneficiary or any other party for a decrease in value  
5 of assets in an estate by reason of the personal  
6 representative's compliance or efforts to comply with an  
7 environmental law, specifically including any reporting  
8 requirement under that law.

9 (4) A personal representative who acquires ownership  
10 or control of a vessel or other property without having owned,  
11 operated, or materially participated in the management of that  
12 vessel or property before assuming ownership or control as  
13 personal representative is not considered an owner or operator  
14 for purposes of liability under chapter 376, chapter 403, or  
15 any other environmental law. A personal representative who  
16 willfully, knowingly, or recklessly causes or exacerbates a  
17 release or threatened release of a hazardous substance is  
18 personally liable for the cost of the response, to the extent  
19 that the release or threatened release is attributable to the  
20 personal representative's activities. This subsection does  
21 not preclude the filing of claims against the assets that  
22 constitute the estate held by the personal representative or  
23 the filing of actions against the personal representative as  
24 representative of the estate ~~in his or her representative~~  
25 ~~capacity~~. In any such an action, an award or judgment against  
26 the personal representative must be satisfied only from the  
27 assets of the estate.

28 (5) Neither the acceptance by the personal  
29 representative of the property or a failure by the personal  
30 representative to inspect or investigate the property creates  
31 any inference of ~~as to whether there is~~ liability under an

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1 environmental law with respect to that property.

2 (6) For the purposes of this section, the term  
3 "environmental law" means a federal, state, or local law,  
4 rule, regulation, or ordinance that relates to protection of  
5 the environment or human health, and the term "hazardous  
6 substance" means a substance, material, or waste defined as  
7 hazardous or toxic, or any contaminant, pollutant, or  
8 constituent thereof, or otherwise regulated by an  
9 environmental law.

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

12 Section 137. Section 733.613, Florida Statutes, is  
13 amended to read:

14 733.613 Personal representative's right to sell real  
15 property.--

16 (1) When a personal representative of an a decedent  
17 ~~dying~~ intestate estate, or whose testator has not conferred  
18 ~~upon him or her~~ a power of sale or whose testator has granted  
19 a power of sale but the his or her power is so limited by the  
20 will or by operation of law that it cannot be conveniently  
21 exercised, shall consider that it is for the best interest of  
22 the estate and of those interested in it that real property be  
23 sold, the personal representative may sell it at public or  
24 private sale. No title shall pass until ~~the sale is~~  
25 ~~authorized or confirmed by the court~~ authorizes or confirms  
26 the sale. ~~Petition for authorization or confirmation of sale~~  
27 ~~shall set forth the reasons for the sale, a description of the~~  
28 ~~property sold or to be sold, and the price and terms of the~~  
29 ~~sale. Except when interested persons have joined in the~~  
30 ~~petition for sale of real property or have consented to the~~  
31 ~~sale, notice of the petition shall be given.~~No bona fide

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1 purchaser shall be required to examine any proceedings before  
2 the order of sale.

3 (2) When a decedent's will confers specific power to  
4 sell or mortgage real property or a general power to sell any  
5 asset of the estate, the personal representative may sell,  
6 mortgage, or lease, without authorization or confirmation of  
7 court, any real property of the estate or any interest therein  
8 for cash or credit, or for part cash and part credit, and with  
9 or without security for unpaid balances. The sale, mortgage,  
10 or lease need not be justified by a showing of necessity, and  
11 the sale pursuant to power of sale shall be valid.

12 (3) In a sale or mortgage which occurs under a  
13 specific power to sell or mortgage real property, or under a  
14 court order authorizing or confirming that act, the purchaser  
15 or lender takes title free of claims of creditors of the  
16 estate and entitlements of estate beneficiaries, except  
17 existing mortgages or other liens against real property are  
18 not affected.

19 Section 138. Section 733.614, Florida Statutes, is  
20 amended to read:

21 733.614 Powers and duties of successor personal  
22 representative.--A successor personal representative has the  
23 same power and duty as the original personal representative to  
24 complete the administration and distribution of the estate as  
25 expeditiously as possible, but ~~he or she~~ shall not exercise  
26 any power made personal to the personal representative named  
27 in the will without court approval.

28 Section 139. Section 733.615, Florida Statutes, is  
29 amended to read:

30 733.615 Joint personal representatives; when joint  
31 action required.--

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1           (1) If two or more persons are appointed joint  
2 personal representatives, and unless the will provides  
3 otherwise, the concurrence of all joint personal  
4 representatives appointed pursuant to a will or codicil  
5 executed prior to October 1, 1987, or appointed to administer  
6 an intestate estate of a decedent who died prior to October 1,  
7 1987, or of a majority of joint personal representatives  
8 appointed pursuant to a will or codicil executed on or after  
9 October 1, 1987, or appointed to administer an ~~the~~ intestate  
10 estate of a decedent dying on or after October 1, 1987, is  
11 required on all acts connected with the administration and  
12 distribution of the estate. This restriction does not apply  
13 when any joint personal representative receives and receipts  
14 for property due the estate, when the concurrence required  
15 under this subsection cannot readily be obtained in the time  
16 reasonably available for emergency action necessary to  
17 preserve the estate, or when a joint personal representative  
18 has been delegated to act for the others.

19           (2) Where action by a majority of the joint personal  
20 representatives appointed is authorized, a joint personal  
21 representative who has not joined in exercising a power is not  
22 liable to the beneficiaries or to others for the consequences  
23 of the exercise, and a dissenting joint personal  
24 representative is not liable for the consequences of an action  
25 ~~act~~ in which the dissenting personal representative ~~he or she~~  
26 joins at the direction of the majority of the joint personal  
27 representatives, if the dissent is ~~he or she~~ expressed ~~his or~~  
28 ~~her dissent~~ in writing to the other ~~any of his or her~~ joint  
29 personal representatives at or before the time of the action  
30 ~~joinder~~.

31           (3) A person dealing with a joint personal

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1 representative without actual knowledge that joint personal  
2 representatives have been appointed or if advised by a the  
3 joint personal representative ~~with whom he or she deals~~ that  
4 the joint personal representative has authority to act alone  
5 for any of the reasons mentioned in subsection (1) is as fully  
6 protected in dealing with that joint personal representative  
7 as if that joint personal representative possessed and  
8 properly exercised the power ~~he or she purports to exercise.~~

9 Section 140. Section 733.616, Florida Statutes, is  
10 amended to read:

11 733.616 Powers of surviving personal  
12 representatives.--Unless otherwise provided by the terms of  
13 the will or a court order ~~otherwise provide~~, every power  
14 exercisable by joint personal representatives may be exercised  
15 by the one or more remaining after the appointment of one or  
16 more is terminated. ~~, and~~ If one or more, but not all,  
17 nominated as joint personal representatives are not appointed,  
18 those appointed may exercise all ~~the~~ powers granted to those  
19 nominated incident to the office.

20 Section 141. Section 733.617, Florida Statutes, is  
21 amended to read:

22 733.617 Compensation of personal representative.--

23 (1) A personal representative shall be entitled to a  
24 commission payable from the estate assets without court order  
25 as compensation for ordinary services. The commission shall  
26 be based on the compensable value of the estate, which is the  
27 inventory value of the probate estate assets and the income  
28 earned by the estate during administration ~~As compensation for~~  
29 ~~its ordinary services, a personal representative shall be~~  
30 ~~entitled, without order of court unless otherwise stated, to a~~  
31 ~~commission payable from the estate assets. Such commission~~

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1 ~~shall be based upon the probate estate's value as determined~~  
2 ~~finally for probate inventory purposes and as accounted for by~~  
3 ~~the personal representative, which value shall include all~~  
4 ~~property, real or personal, tangible or intangible, and all~~  
5 ~~income earned thereon.~~

6 (2) A commission computed on the compensable value of  
7 the estate is presumed to be reasonable compensation for a  
8 personal representative in formal administration ~~Upon the~~  
9 ~~probate estate's value as defined in subsection (1), such~~  
10 ~~commission shall be computed as follows:~~

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

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

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

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

18 (3) In addition to the previously described ~~aforsaid~~  
19 ~~commission~~, a personal representative shall be allowed ~~such~~  
20 further compensation as is ~~the court may deem just and~~  
21 reasonable for any extraordinary services including, but not  
22 limited to:

23 (a) The sale of real or personal property.

24 (b) The conduct of litigation on behalf of or against  
25 the estate.

26 (c) Involvement in proceedings for the adjustment or  
27 payment of any taxes.

28 (d) The carrying on of the decedent's business.

29 (e) Dealing with protected homestead.

30 (f) ~~(e)~~ Any other special services which may be  
31 necessary for the personal representative to perform.

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1           (4) If the a decedent's will provides that a personal  
2 representative's compensation shall be based upon specific  
3 criteria, other than a general reference to commissions  
4 allowed by law or words or similar import, including, but not  
5 limited to, rates, amounts, commissions, or reference to the  
6 personal representative's regularly published schedule of fees  
7 in effect at the decedent's date of death, or words of similar  
8 import, then a personal representative shall be entitled to  
9 compensation in accordance with that such provision. However,  
10 except for ~~such~~ references in the a decedent's will to the  
11 personal representative's regularly published schedule of fees  
12 in effect at the decedent's date of death, or words of similar  
13 import, if there is no written contract with the decedent  
14 regarding compensation, a personal representative may renounce  
15 the provisions contained in the will and be entitled to  
16 compensation under this section hereunder. A personal  
17 representative may also renounce the its right to all or any  
18 part of the compensation.

19           (5) If the probate estate's compensable value ~~as~~  
20 ~~defined in subsection (1)~~ is \$100,000 or more, and there are  
21 two representatives, each personal representative is entitled  
22 to the full commission allowed to a sole personal  
23 representative. If there are more than two personal  
24 representatives and the probate estate's compensable value is  
25 ~~more than~~ \$100,000 or more, the compensation to which two  
26 would be entitled must be apportioned among the personal  
27 representatives. The basis for ~~such~~ apportionment shall be  
28 one full commission allowed to the personal representative who  
29 has possession of and primary responsibility for  
30 administration of the assets and one full commission among the  
31 remaining personal representatives according to the services



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1 rendered by each of them respectively. If the probate  
2 estate's compensable value is less than \$100,000 and there is  
3 more than one personal representative, then one full  
4 commission ~~allowed herein to a sole personal representative~~  
5 must be apportioned among the personal representatives  
6 according to the services rendered by each of them  
7 respectively.

8 (6) If the personal representative is a member of The  
9 Florida Bar and has rendered legal services in connection with  
10 the administration of the estate, then in addition to a fee as  
11 personal representative, there also shall be allowed a fee for  
12 the legal services rendered.

13 (7) Upon petition of any interested person, the court  
14 may increase or decrease the compensation for ordinary  
15 services of the personal representative or award compensation  
16 for extraordinary services if the facts and circumstances of  
17 the particular administration warrant. In determining  
18 reasonable compensation, the court shall consider all of the  
19 following factors, giving weight to each as it determines to  
20 be appropriate ~~The compensation for a personal representative~~  
21 ~~as set forth in subsections (2) and (3) may, upon petition of~~  
22 ~~any interested person, be increased or decreased by the court.~~  
23 ~~In determining whether to increase or decrease the~~  
24 ~~compensation for ordinary services, the court must consider~~  
25 ~~each of the following factors, giving each such weight as it~~  
26 ~~determines to be appropriate:~~

27 (a) The promptness, efficiency, and skill with which  
28 the administration was handled by the personal representative;

29 (b) The responsibilities assumed by and the potential  
30 liabilities of the personal representative;

31 (c) The nature and value of the assets that are

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1 affected by the decedent's death;

2 (d) The benefits or detriments resulting to the estate  
3 or interested persons ~~its beneficiaries~~ from the personal  
4 representative's services;

5 (e) The complexity or simplicity of the administration  
6 and the novelty ~~novelties~~ of the issues presented;

7 (f) The personal representative's participation in tax  
8 planning for the estate and the estate's beneficiaries and in  
9 tax return preparation, review, or approval;

10 (g) The nature of the probate, nonprobate, and exempt  
11 assets, ~~the~~ expenses of administration, ~~the~~ liabilities of  
12 the decedent, ~~and~~ the compensation paid to other  
13 professionals and fiduciaries;

14 (h) Any delay in payment of the compensation after the  
15 services were furnished; and

16 (i) Any other relevant factors.

17 Section 142. Section 733.6171, Florida Statutes, is  
18 amended to read:

19 733.6171 Compensation of attorney for the personal  
20 representative.--

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

24 (2) The attorney, the personal representative, and  
25 persons bearing the impact of the compensation may agree to  
26 compensation determined in a different manner than provided in  
27 this section. Compensation may also be determined in a  
28 different manner than provided in this section if the manner  
29 is disclosed to the parties bearing the impact of the  
30 compensation and if no objection is made as provided for in  
31 the Florida Probate Rules ~~in the petition for discharge or~~

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1 ~~final accounting and there is no objection filed pursuant to~~  
2 ~~s. 733.901.~~

3 (3) ~~Compensation provided in the following schedule~~  
4 ~~for ordinary services of attorneys in formal estate~~  
5 ~~administration is presumed to be reasonable if based on the~~  
6 ~~compensable upon the inventory value of the estate, which is~~  
7 ~~the inventory value of the probate estate assets and the~~  
8 ~~income earned by the estate during the administration as~~  
9 ~~provided in the following schedule is presumed to be~~  
10 ~~reasonable compensation for attorneys in formal estate~~  
11 ~~administration:~~

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

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

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

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

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

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

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

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

28 (4) In addition to ~~the attorney's~~ fees for ordinary  
29 services, the attorney for the personal representative shall  
30 be allowed further reasonable compensation for any  
31 extraordinary service. What is an extraordinary service may

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1 vary depending on many factors, including the size of the  
2 estate. Extraordinary services may include, but are not  
3 limited to:

4 (a) Involvement in a will contest, will construction,  
5 a proceeding for determination of beneficiaries, a contested  
6 claim, elective share proceeding, apportionment of estate  
7 taxes, or any ~~other~~ adversarial proceeding or litigation by or  
8 against the estate.

9 (b) Representation of the personal representative in  
10 audit or any proceeding for adjustment, determination, or  
11 collection of any taxes.

12 (c) Tax advice on postmortem tax planning, including,  
13 but not limited to, disclaimer, renunciation of fiduciary  
14 commission, alternate valuation date, allocation of  
15 administrative expenses between tax returns, the QTIP or  
16 reverse QTIP election, allocation of GST exemption,  
17 qualification for Internal Revenue Code ss. 6166 and 303  
18 privileges, deduction of last illness expenses, fiscal year  
19 planning, distribution planning, asset basis considerations,  
20 handling income or deductions in respect of a decedent,  
21 valuation discounts, special use and other valuation, handling  
22 employee benefit or retirement proceeds, prompt assessment  
23 request, or request for release of personal liability for  
24 payment of tax.

25 (d) Review of estate tax return and preparation or  
26 review of other tax returns required to be filed by the  
27 personal representative.

28 (e) Preparation of the estate's federal estate tax  
29 return. If this return is prepared by the attorney, a fee of  
30 one-half of 1 percent up to a value of \$10 million and  
31 one-fourth of 1 percent on the value in excess of \$10 million

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1 of the gross estate as finally determined for federal estate  
2 tax purposes, is presumed to be reasonable compensation for  
3 the attorney for this service. These fees shall include  
4 services for routine audit of the return, not beyond the  
5 examining agent level, if required.

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

9 (g) Legal advice regarding carrying on of the  
10 decedent's business or conducting other commercial activity by  
11 the personal representative.

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

14 (i) Legal advice regarding homestead status of real  
15 property or proceedings involving that status and services  
16 related to protected homestead.

17 (j) Involvement in fiduciary, employee, or attorney  
18 compensation disputes.

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

21 (5) Upon petition of any interested person, the court  
22 may increase or decrease the compensation for ordinary  
23 services of the attorney or award compensation for  
24 extraordinary services if the facts and circumstances of the  
25 particular administration warrant. In determining reasonable  
26 compensation, the court shall consider all of the following  
27 factors, giving ~~such~~ weight to each as it determines ~~may~~  
28 ~~determine~~ to be appropriate:

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

31 (b) The responsibilities assumed by, and the potential

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1 liabilities of the attorney.

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

4 (d) The benefits or detriments resulting to the estate  
5 or interested persons ~~its beneficiaries~~ from the attorney's  
6 services.

7 (e) The complexity or simplicity of the administration  
8 and the novelty of issues presented.

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

12 (g) The nature of the probate, nonprobate, and exempt  
13 assets, the expenses of administration, the ~~and~~ liabilities of  
14 the decedent, and the compensation paid to other professionals  
15 and fiduciaries.

16 (h) Any delay in payment of the compensation after the  
17 services were furnished.

18 (i) Any other relevant factors.

19 ~~(6) The court may determine reasonable attorney's~~  
20 ~~compensation without receiving expert testimony. Any party~~  
21 ~~may offer expert testimony after notice to interested persons.~~  
22 ~~If expert testimony is offered, an expert witness fee may be~~  
23 ~~awarded by the court and paid from the assets of the estate.~~  
24 ~~The court may, in its discretion, direct from what part of the~~  
25 ~~estate it shall be paid.~~

26 (6)(7) If a separate written agreement regarding  
27 compensation exists between the attorney and the decedent, the  
28 attorney shall furnish a copy to the personal representative  
29 prior to commencement of employment, and, if employed, shall  
30 promptly file and serve a copy on all interested persons.  
31 Neither a separate agreement nor a provision in the will

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1 suggesting or directing that the personal representative to  
2 retain a specific attorney will obligate the personal  
3 representative to employ the attorney or obligate the attorney  
4 to accept the representation, but if the attorney who is a  
5 party to the agreement or who drafted the will is employed,  
6 the compensation paid shall not exceed the compensation  
7 provided in the agreement or in the will.

8 ~~(8) Court proceedings to determine compensation, if~~  
9 ~~required, are a part of the estate administration process, and~~  
10 ~~the costs, including fees for the personal representative's~~  
11 ~~attorney, shall be determined by the court and paid from the~~  
12 ~~assets of the estate unless the court finds the request for~~  
13 ~~attorney's fees to be substantially unreasonable. The court~~  
14 ~~shall direct from which part of the estate they shall be paid.~~

15 ~~(9) The amount and manner of determining compensation~~  
16 ~~for attorneys for personal representatives must be disclosed~~  
17 ~~in the final accounting, unless the disclosure is waived in~~  
18 ~~writing signed by the parties bearing the impact of the~~  
19 ~~compensation and filed with the court. No such waiver shall~~  
20 ~~be valid unless it contains language declaring that the~~  
21 ~~waiving party has actual knowledge of the amount and manner of~~  
22 ~~determining such compensation and, in addition, expressly~~  
23 ~~acknowledging either one of the following two elements:~~

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

27 ~~(b) That the waiving party has the right under~~  
28 ~~subsection (5) to petition the court to decrease such~~  
29 ~~compensation and is waiving that right.~~

30

31 ~~The requirements of this subsection shall not apply if the~~

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1 ~~full amount of such compensation has previously been~~  
2 ~~determined by order of the court after notice. A waiver of~~  
3 ~~the final accounting shall not be effective if it does not~~  
4 ~~meet the requirements of this subsection.~~

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

9 Section 143. Section 733.6175, Florida Statutes, is  
10 amended to read:

11 733.6175 Proceedings for review of employment of  
12 agents and compensation of personal representatives and  
13 employees of estate.--

14 (1) The court may review the propriety of the  
15 employment of any person employed by the personal  
16 representative and the reasonableness of any compensation paid  
17 to that person or to the personal representative.

18 (2) Court proceedings to determine reasonable  
19 compensation of the personal representative or any person  
20 employed by the personal representative, if required, are a  
21 part of the estate administration process, and the costs,  
22 including attorneys' fees, of the person assuming the burden  
23 of proof of propriety of the employment and reasonableness of  
24 the compensation shall be determined by the court and paid  
25 from the assets of the estate unless the court finds the  
26 requested compensation to be substantially unreasonable. The  
27 court shall direct from which part of the estate the  
28 compensation shall be paid.

29 ~~(3) After notice to all affected interested persons~~  
30 ~~and upon petition of an interested person bearing all or part~~  
31 ~~of the impact of the payment of compensation to the personal~~



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1 ~~representative or any person employed by him or her, the~~  
2 ~~propriety of such employment and the reasonableness of such~~  
3 ~~compensation or payment may be reviewed by the court. The~~  
4 burden of proof of propriety of the ~~such~~ employment and the  
5 reasonableness of the compensation shall be upon the personal  
6 representative and the person employed ~~by him or her~~. Any  
7 person who is determined to have received excessive  
8 compensation from an estate for services rendered may be  
9 ordered to make appropriate refunds.

10 (4) The court may determine reasonable compensation  
11 for the personal representative or any person employed by the  
12 personal representative without receiving expert testimony.  
13 Any party may offer expert testimony after notice to  
14 interested persons. If expert testimony is offered, a  
15 reasonable expert witness fee shall be awarded by the court  
16 and paid from the assets of the estate. The court shall direct  
17 from what part of the estate the fee shall be paid.

18 Section 144. Section 733.619, Florida Statutes, is  
19 amended to read:

20 733.619 Individual liability of personal  
21 representative.--

22 (1) Unless otherwise provided in the contract, a  
23 personal representative is not individually liable on a  
24 contract, except a contract for attorney's fee, properly  
25 entered into as ~~in his or her~~ fiduciary capacity in the  
26 ~~administration of the estate~~ unless the personal  
27 representative fails to reveal that ~~his or her~~ representative  
28 capacity and identify the estate in the contract.

29 (2) A personal representative is individually liable  
30 for obligations arising from ownership or control of the  
31 estate or for torts committed in the course of administration

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1 of the estate only if ~~he or she is~~ personally at fault.

2 (3) Claims based on contracts, except a contract for  
3 attorney's fee, entered into by a personal representative as a  
4 fiduciary in his or her fiduciary capacity, on obligations  
5 arising from ownership or control of the estate, or on torts  
6 committed in the course of estate administration, may be  
7 asserted against the estate by proceeding against the personal  
8 representative in that ~~his or her fiduciary~~ capacity, whether  
9 or not the personal representative is individually liable  
10 therefor.

11 (4) Issues of liability as between the estate and the  
12 personal representative individually may be determined in a  
13 proceeding for accounting, surcharge, or indemnification, or  
14 other appropriate proceeding.

15 Section 145. Section 733.701, Florida Statutes, is  
16 amended to read:

17 733.701 Notifying creditors.--Unless creditors' claims  
18 are otherwise barred by s. 733.710 ~~the proceedings are under~~  
19 ~~chapter 734 or chapter 735~~, every personal representative  
20 shall cause notice to creditors of administration to be  
21 published and served under s. 733.2121 ~~733.212~~.

22 Section 146. Section 733.702, Florida Statutes, is  
23 amended to read:

24 733.702 Limitations on presentation of claims.--

25 (1) If not barred by s. 733.710, no claim or demand  
26 against the decedent's estate that arose before the death of  
27 the decedent, including claims of the state and any of its  
28 subdivisions, even if the claims are unmatured, contingent,  
29 ~~whether due or not, direct or contingent, or liquidated or~~  
30 ~~unliquidated; no claim for funeral or burial expenses; no~~  
31 claim for personal property in the possession of the personal

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1 representative; and no claim for damages, including, but not  
2 limited to, an action founded on fraud or another wrongful act  
3 or omission of the decedent, is binding on the estate, on the  
4 personal representative, or on any beneficiary unless filed in  
5 the probate proceeding within the later of 3 months after the  
6 time of the first publication of the notice to creditors ~~of~~  
7 ~~administration~~ or, as to any creditor required to be served  
8 with a copy of the notice to creditors ~~of administration~~, 30  
9 days after the date of service ~~of such copy of the notice~~ on  
10 the creditor, even though the personal representative has  
11 recognized the claim or demand by paying a part of it or  
12 interest on it or otherwise. The personal representative may  
13 settle in full any claim without the necessity of the claim  
14 being filed when the settlement has been approved by the  
15 interested persons ~~beneficiaries adversely affected according~~  
16 ~~to the priorities provided in this code and when the~~  
17 ~~settlement is made within the statutory time for filing~~  
18 ~~claims; or, within 3 months after the first publication of the~~  
19 ~~notice of administration, he or she may file a proof of claim~~  
20 ~~of all claims he or she has paid or intends to pay.~~

21 (2) No cause of action ~~heretofore or hereafter~~  
22 ~~accruing~~, including, but not limited to, an action founded  
23 upon fraud or other wrongful act or omission, shall survive  
24 the death of the person against whom the claim may be made,  
25 whether or not an action is pending at the death of the person  
26 ~~or not~~, unless a the claim is filed within the time periods  
27 set forth in this part.

28 (3) Any claim not timely filed as provided in this  
29 section is barred even though no objection to the claim is  
30 filed ~~on the grounds of timeliness or otherwise~~ unless the  
31 court extends the time in which the claim may be filed. ~~Such~~

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1 An extension may be granted only upon grounds of fraud,  
2 estoppel, or insufficient notice of the claims period. No  
3 independent action or declaratory action may be brought upon a  
4 claim which was not timely filed unless ~~such~~ an extension has  
5 been granted by the court. If the personal representative or  
6 any other interested person serves on the creditor a notice to  
7 file a petition for an extension ~~or be forever barred~~, the  
8 creditor shall be limited to a period of 30 days from the date  
9 of service of the notice in which to file a petition for  
10 extension.

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

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

14 (b) To the limits of casualty insurance protection  
15 only, any proceeding to establish liability that of the  
16 ~~decedent or the personal representative for which he or she is~~  
17 protected by the casualty insurance.

18 ~~(c) The filing of a claim by the Department of Revenue~~  
19 ~~subsequent to the expiration of the time for filing claims~~  
20 ~~provided in subsection (1), provided it does so file within 30~~  
21 ~~days after the service of the inventory by the personal~~  
22 ~~representative on the department or, in the event an amended~~  
23 ~~or supplementary inventory has been prepared, within 30 days~~  
24 ~~after the service of the amended or supplementary inventory by~~  
25 ~~the personal representative on the department.~~

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

30 (5) The Department of Revenue may file a claim against  
31 the estate of a decedent for taxes due under chapter 199 after

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1 the expiration of the time for filing claims provided in  
2 subsection (1), if the department files its claim within 30  
3 days after the service of the inventory. Upon filing of the  
4 estate tax return with the department as provided in s.  
5 198.13, or to the extent the inventory or estate tax return is  
6 amended or supplemented, the department has the right to file  
7 a claim or to amend its previously filed claim within 30 days  
8 after service of the estate tax return, or an amended or  
9 supplemented inventory or filing of an amended or supplemental  
10 estate tax return, as to the additional information disclosed.

11 ~~(6)(5)~~ Nothing in this section shall extend the  
12 limitations period set forth in s. 733.710.

13 Section 147. Subsection (2) of section 733.703,  
14 Florida Statutes, is amended to read:

15 733.703 Form and manner of presenting claim.--

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

25 Section 148. Section 733.704, Florida Statutes, is  
26 amended to read:

27 733.704 Amendment of claims.--If a bona fide attempt  
28 to file a claim is made ~~by a creditor~~ but the claim is  
29 defective as to form, the court may permit the amendment of  
30 the claim at any time.

31 Section 149. Section 733.705, Florida Statutes, is

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1 amended to read:

2 733.705 Payment of and objection to claims.--

3 (1) The personal representative shall pay all claims  
4 within 1 year from the date of first publication of notice to  
5 creditors of administration, provided that the time shall be  
6 extended with respect to claims in litigation, unmaturred  
7 claims, and contingent claims for the period necessary to  
8 dispose of those such claims pursuant to subsections~~(4)~~, (5),  
9 (6), ~~and (7)~~, and (8). The court may extend the time for  
10 payment of any claim upon a showing of good cause. No  
11 personal representative shall be compelled to pay the debts of  
12 the decedent until after the expiration of 5 months from the  
13 first publication of notice to creditors ~~of administration~~.  
14 If any person brings an action against a personal  
15 representative within the 5 months on any claim to which the  
16 personal representative has not filed an ~~no~~ objection, the  
17 plaintiff shall not receive any costs or attorneys' fees ~~if he~~  
18 ~~or she prevails~~, nor shall the judgment change the class of  
19 the claim for payment under this code.

20 (2) On or before the expiration of 4 months from the  
21 first publication of notice to creditors ~~of administration~~ or  
22 within 30 days from the timely filing or amendment of a claim,  
23 whichever occurs later, a personal representative or other  
24 interested person may file a written objection to a claim. ~~An~~  
25 ~~objection to a claim shall contain a statement that the~~  
26 ~~claimant is limited to a period of 30 days from the date of~~  
27 ~~service of the objection within which to bring an action on~~  
28 ~~the claim as provided in subsection (4). The failure to~~  
29 ~~include such a statement in the objection shall not affect the~~  
30 ~~validity of the objection but may be considered as good cause~~  
31 ~~for extending the time for filing an action or proceeding~~

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1 ~~after the objection is filed. If an objection is filed, the~~  
2 ~~person filing it shall serve a copy of the objection as~~  
3 ~~provided by the Florida Probate Rules by registered or~~  
4 ~~certified mail to the address of the claimant or the~~  
5 ~~claimant's attorney as shown on the claim or by delivery to~~  
6 ~~the claimant to whose claim the person objects or the~~  
7 ~~claimant's attorney of record, if any, not later than 10 days~~  
8 ~~after the objection has been filed, and also on the personal~~  
9 ~~representative if the objection is filed by any interested~~  
10 ~~person other than the personal representative. The failure to~~  
11 ~~serve a copy of the objection constitutes an abandonment of~~  
12 ~~the objection. For good cause, the court may extend the time~~  
13 ~~for filing or serving an objection to any claim or may extend~~  
14 ~~the time for serving the objection. The extension of time~~  
15 ~~shall be granted only after notice. Objection to a claim~~  
16 ~~constitutes an objection to an amendment of that claim unless~~  
17 ~~the objection is withdrawn.~~

18 (3) If the objection is filed by a person other than  
19 the personal representative, the personal representative may  
20 apply to the court for an order relieving him or her from the  
21 obligation to defend the estate in an independent action or  
22 for the appointment of the objector as administrator ad litem  
23 to defend the action. Fees for the attorney for the  
24 administrator ad litem may be awarded as provided in s.  
25 733.106(3). If costs or attorney's fees are awarded from or  
26 against the estate, the probate court may charge or apportion  
27 that award as provided in s. 733.106(4).

28 (4)(3) An objection by an interested person to a  
29 personal representative's proof of claim shall state the  
30 particular item or items to which the interested person  
31 objects and shall be filed and served as provided in

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1 subsection (2). Issues of liability as between the estate and  
2 the personal representative individually for items ~~paid by the~~  
3 ~~personal representative and thereafter~~ listed in a personal  
4 representative's proof of claim shall be determined in the  
5 estate administration ~~proceeding~~, in a proceeding for  
6 accounting ~~or~~ surcharge, or in another ~~other~~ appropriate  
7 proceeding, whether or not an objection has been filed. If an  
8 objection to an item listed as to be paid in a personal  
9 representative's proof of claim is filed and served, and the  
10 personal representative has not paid the item, the other  
11 subsections of this section shall apply as if a claim for the  
12 item had been filed by the claimant; but if the personal  
13 representative has paid the claim after listing it as to be  
14 paid, issues of liability as between the estate and the  
15 personal representative individually shall be determined in  
16 the manner provided for an item listed as paid.

17 (5)~~(4)~~ The claimant is limited to a period of 30 days  
18 from the date of service of an objection within which to bring  
19 an independent action upon the claim, or a declaratory action  
20 to establish the validity and amount of an unmatured claim  
21 which is not yet due but which is certain to become due in the  
22 future, or a declaratory action to establish the validity of a  
23 contingent claim upon which no cause of action has accrued on  
24 the date of service of an objection and that may or may not  
25 become due in the future, unless an extension of this time is  
26 agreed to by the personal representative in writing before it  
27 expires. For good cause, the court may extend the time for  
28 filing an action or proceeding after objection is filed. ~~The~~  
29 ~~extension of time shall be granted only after notice.~~ No  
30 action or proceeding on the claim may ~~shall~~ be brought against  
31 the personal representative after the time limited above, and



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1 ~~the any such~~ claim is thereafter forever barred without any  
2 court order. If an objection is filed to the claim of any  
3 creditor and ~~an action is brought by~~ the creditor brings an  
4 action to establish the ~~his or her~~ claim, a judgment  
5 establishing the claim shall give it no priority over claims  
6 of the same class to which it belongs.

7 (6)~~(5)~~ A claimant may bring an independent action or  
8 declaratory action upon a claim which was not timely filed  
9 pursuant to s. 733.702(1) only if the claimant has been  
10 granted an extension of time to file the claim pursuant to s.  
11 733.702(3).

12 (7)~~(6)~~ If an unmatured claim has not become due before  
13 the time for distribution of an estate, the personal  
14 representative may prepay the full amount of principal plus  
15 accrued interest due on the claim, without discount and  
16 without penalty, regardless of any prohibition against  
17 prepayment or provision for penalty in any instrument on which  
18 the claim is founded. If the claim is not prepaid, no order  
19 of discharge may be entered until the creditor and personal  
20 representative have filed an agreement disposing of the claim,  
21 or in the absence of an agreement until the court provides for  
22 payment by one of the following methods:

23 (a) Requiring the personal representative to reserve  
24 such assets as the court determines to be adequate to pay the  
25 claim when it becomes due; in fixing the amount to be  
26 reserved, the court may determine the value of any security or  
27 collateral to which the creditor may resort for payment of the  
28 claim and may direct the reservation, if necessary, of  
29 sufficient assets to pay the claim or to pay the difference  
30 between the value of any security or collateral and the amount  
31 necessary to pay the claim. If the estate is insolvent, the

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1 court may direct a proportionate amount to be reserved. The  
2 court shall direct that the amount reserved be retained by the  
3 personal representative until the time that the claim becomes  
4 due, and that so much of the reserved amount as is not used  
5 for payment be distributed ~~thereafter~~ according to law;

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

12 (c) Making provisions ~~such other provision~~ for the  
13 disposition or satisfaction of the claim as are ~~is~~ equitable,  
14 and in a manner so as not to delay unreasonably the closing of  
15 the estate.

16 ~~(8)(7)~~ If no cause of action has accrued on a  
17 contingent claim before the time for distribution of an  
18 estate, no order of discharge may be entered until the  
19 creditor and the personal representative have filed an  
20 agreement disposing of the claim or, in the absence of an ~~such~~  
21 agreement, until:

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

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

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

29 (d) The court provides for payment of the claim upon  
30 the happening of the contingency by one of the methods  
31 described in paragraph (a), paragraph (b), or paragraph (c) of

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1 subsection (7)~~(6)~~,

2

3 whichever occurs first. No action or proceeding on the claim  
4 may be brought against the personal representative after the  
5 time limited above, and the claim is barred without court  
6 order. If an objection is filed to the claim of any creditor  
7 and the creditor brings an action to establish the claim, a  
8 judgment establishing the claim shall give it no priority over  
9 claims of the same class to which it belongs ~~No action or~~  
10 ~~proceeding may be brought against the personal representative~~  
11 ~~on the claim after the time limited above, and any such claim~~  
12 ~~shall thereafter be forever barred without order of court. If~~  
13 ~~an action is brought within the time limited above, a judgment~~  
14 ~~establishing the claim shall give it no priority over claims~~  
15 ~~of the same class to which it belongs.~~

16 ~~(9)~~~~(8)~~ ~~No interest shall be paid by the personal~~  
17 ~~representative or allowed by the court on a claim until the~~  
18 ~~expiration of 5 calendar months from the first publication of~~  
19 ~~the notice of administration, unless the claim is founded on a~~  
20 ~~written obligation of the decedent providing for the payment~~  
21 ~~of interest. Interest shall be paid by the personal~~  
22 ~~representative on written obligations of the decedent~~  
23 ~~providing for the payment of interest. On all other claims,~~  
24 ~~interest shall be allowed and paid beginning 5 months from the~~  
25 ~~first publication of the notice to creditors of~~  
26 ~~administration.~~

27 ~~(10)~~~~(9)~~ The court may determine all issues concerning  
28 claims or matters not requiring trial by jury.

29 ~~(11)~~~~(10)~~ An order for extension of time authorized  
30 under this section may be entered only in the estate  
31 administration proceeding.

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1           Section 150. Section 733.707, Florida Statutes, is  
2 amended to read:

3           733.707 Order of payment of expenses and  
4 obligations.--

5           (1) The personal representative shall pay the expenses  
6 of the administration and obligations of the decedent's estate  
7 in the following order:

8           (a) Class 1.--Costs, expenses of administration, and  
9 compensation of personal representatives and their attorneys  
10 attorneys' fees and attorneys fees awarded under s.  
11 733.106(3).

12           (b) Class 2.--Reasonable funeral, interment, and grave  
13 marker expenses, whether paid by a guardian ~~under s.~~  
14 ~~744.441(16)~~, the personal representative, or any other person,  
15 not to exceed the aggregate of \$6,000.

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

18           (d) Class 4.--Reasonable and necessary medical and  
19 hospital expenses of the last 60 days of the last illness of  
20 the decedent, including compensation of persons attending the  
21 decedent ~~him or her~~.

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

23           (f) Class 6.--Arrearage from court-ordered child  
24 support.

25           (g) Class 7.--Debts acquired after death by the  
26 continuation of the decedent's business, in accordance with s.  
27 733.612(22), but only to the extent of the assets of that  
28 business.

29           (h) Class 8.--All other claims, including those  
30 founded on judgments or decrees rendered against the decedent  
31 during the decedent's lifetime, and any excess over the sums

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1 allowed in paragraphs (b) and (d).

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

6 (3) Any portion of a trust with respect to which a  
7 decedent who is the grantor has at the decedent's death a  
8 right of revocation, as defined in paragraph (e), either alone  
9 or in conjunction with any other person, is liable for the  
10 expenses of the administration and obligations of the  
11 decedent's estate ~~and enforceable claims of the decedent's~~  
12 ~~creditors~~ to the extent the decedent's estate is insufficient  
13 to pay them as provided in s. 733.607(2).

14 (a) For purposes of this subsection, any trusts  
15 established as part of, and all payments from, either an  
16 employee annuity described in s. 403 of the Internal Revenue  
17 Code of 1986, as amended, an Individual Retirement Account, as  
18 described in s. 408 of the Internal Revenue Code of 1986, as  
19 amended, a Keogh (HR-10) Plan, or a retirement or other plan  
20 established by a corporation which is qualified under s. 401  
21 of the Internal Revenue Code of 1986, as amended, shall not be  
22 considered a trust over which the decedent has a right of  
23 revocation.

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

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

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1 (d) For purposes of this subsection, property held or  
2 received by a trust to the extent that the property would not  
3 have been subject to claims against the decedent's estate if  
4 it had been paid directly to a trust created under the  
5 decedent's will or other than to the decedent's estate, or  
6 assets received from any trust other than a trust described in  
7 this subsection, shall not be deemed assets of the trust  
8 available to ~~for the payment of the expenses of administration~~  
9 ~~of and enforceable claims against~~ the decedent's estate.

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

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

15 2. Withdraw or appoint the principal of the trust to  
16 or for the decedent's benefit.

17 Section 151. Section 733.708, Florida Statutes, is  
18 amended to read:

19 733.708 Compromise.--When a proposal is made to  
20 compromise any claim, whether in suit or not, by or against  
21 the estate of a decedent or to compromise any question  
22 concerning the distribution of a decedent's estate, the court  
23 may enter an order authorizing the compromise if satisfied  
24 that the compromise will be for the best interest of the  
25 interested persons ~~beneficiaries~~. The order shall relieve the  
26 personal representative of liability or responsibility for the  
27 compromise. Claims against the estate may not be compromised  
28 until after the time for filing objections to claims has  
29 expired. ~~Notice must be given to those who have filed~~  
30 ~~objection to the claim proposed to be compromised.~~

31 Section 152. Subsection (1) of section 733.710,

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1 Florida Statutes, is amended to read:

2 733.710 Limitations on claims against estates.--

3 (1) Notwithstanding any other provision of the code, 2  
4 years after the death of a person, neither the decedent's  
5 estate, the personal representative, ~~(if any)~~, nor the  
6 beneficiaries shall be liable for any claim or cause of action  
7 against the decedent, whether or not letters of administration  
8 have been issued, except as provided in this section.

9 Section 153. Section 733.801, Florida Statutes, is  
10 amended to read:

11 733.801 Delivery of devises and distributive shares.--

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

16 (2) Except as otherwise provided in the will, the  
17 personal representative shall pay as an expense of  
18 administration the reasonable expenses of storage, insurance,  
19 packing, and delivery of tangible personal property to a  
20 beneficiary.

21 Section 154. Subsections (1) and (2) of section  
22 733.802, Florida Statutes, are amended to read:

23 733.802 Proceedings for compulsory payment of devises  
24 or distributive interest.--

25 (1) Before final distribution, no personal  
26 representative shall be compelled:

27 (a) To pay a devise in money before the final  
28 settlement of the personal representative's ~~his or her~~  
29 accounts,

30 (b) To deliver specific personal property devised ~~that~~  
31 ~~may have come into his or her hands~~, unless the personal

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1 property is exempt personal property,

2 (c) To pay all or any part of a distributive share in  
3 the personal estate of a decedent, or

4 (d) To surrender land to any beneficiary,

5  
6 unless the beneficiary establishes ~~files a petition setting~~  
7 ~~forth the facts that entitle him or her to relief and stating~~  
8 that the property will not be required for the payment of  
9 debts, family allowance, estate and inheritance taxes, claims,  
10 elective share of the surviving spouse, charges, or expenses  
11 of administration or to provide ~~for providing~~ funds for  
12 contribution or to enforce ~~enforcing~~ equalization in case of  
13 advancements.

14 (2) An order directing the surrender of real property  
15 or the delivery of personal property by the personal  
16 representative to the beneficiary ~~shall describe the property~~  
17 ~~to be surrendered or delivered.~~ The order shall be conclusive  
18 in favor of bona fide purchasers for value from the  
19 beneficiary or distributee as against the personal  
20 representative and all other persons claiming by, through,  
21 under, or against the decedent or the decedent's estate.

22 Section 155. Section 733.803, Florida Statutes, is  
23 amended to read:

24 733.803 Encumbered property; liability for  
25 payment.--The specific devisee of any encumbered property  
26 shall be entitled to have the encumbrance on devised property  
27 paid at the expense of the residue of the estate only when the  
28 will shows that ~~such an~~ intent. A general direction in the  
29 will to pay debts does not show that ~~such an~~ intent.

30 Section 156. Section 733.805, Florida Statutes, is  
31 amended to read:



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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

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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

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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 proceeds were payable directly to the beneficiaries named in

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1 the trust.

2 (5) The death benefits ~~so~~ held in trust may be  
3 commingled with any other assets that may properly come into  
4 the trust.

5 (6) Nothing in this section shall affect the validity  
6 of any designation of a beneficiary of proceeds previously  
7 ~~heretofore~~ made that designates as beneficiary the trustee of  
8 any trust established under a trust agreement or declaration  
9 of trust or by will.

10 Section 159. Section 733.809, Florida Statutes, is  
11 amended to read:

12 733.809 Right of retainer.--The amount of a  
13 noncontingent indebtedness due from ~~of~~ a beneficiary to the  
14 estate, ~~if due,~~ or its present value, if not due, may be  
15 offset against that ~~the~~ beneficiary's interest. However, that,  
16 ~~but the~~ beneficiary shall have ~~has~~ the benefit of any defense  
17 that would be available ~~to him or her~~ in a direct proceeding  
18 for recovery of the debt.

19 Section 160. Section 733.810, Florida Statutes, is  
20 amended to read:

21 733.810 Distribution in kind; valuation.--

22 (1) Assets shall be distributed in kind unless:

23 (a) A general power of sale is conferred;

24 (b) A contrary intention is indicated by the will or  
25 trust; or

26 (c) Disposition is made otherwise under the provisions  
27 of this code. ~~Unless a general power of sale is conferred or a~~  
28 ~~contrary intention is indicated by the will or unless assets~~  
29 ~~are otherwise disposed of under the provisions of this code,~~  
30 ~~the distributable assets of a decedent's estate shall be~~  
31 ~~distributed in kind through application of the following~~

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1 ~~provisions:~~

2 ~~(2)(a) Any pecuniary devise, family allowance, or~~  
3 ~~other pecuniary share of the estate or trust or devise payable~~  
4 ~~in money may be satisfied by value in kind if:~~

5 ~~(a)1. The person entitled to the payment has not~~  
6 ~~demanded cash;~~

7 ~~(b)2. The property is distributed ~~in kind is valued~~ at~~

8 ~~fair market value as of the date of its distribution date;~~ and

9 ~~(c)3. No residuary devisee has requested that the~~  
10 ~~asset remain a part of the residuary residue of the estate.~~

11 ~~(3)(b) When it is not practicable to distribute~~  
12 ~~undivided interests in a residuary asset property, the asset~~  
13 ~~may property shall be sold converted into cash for~~  
14 ~~distribution.~~

15 ~~(4)(2) When the personal representative, trustee, or~~  
16 ~~other fiduciary under a will or trust instrument is required~~  
17 ~~to, or has an option, to, satisfy a pecuniary devise or~~  
18 ~~transfer in trust, to, or for the benefit of, the surviving~~  
19 ~~spouse, with an in-kind distribution ~~assets of the estate or~~~~  
20 ~~trust in kind, at values as finally determined for federal~~  
21 ~~estate tax purposes, the personal representative, trustee, or~~  
22 ~~other fiduciary shall, unless the governing will or trust~~  
23 ~~instrument otherwise provides, satisfy the devise or transfer~~  
24 ~~in trust by distribution of assets, including cash, fairly~~  
25 ~~representative of the appreciated or depreciated value of all~~  
26 ~~property available for that distribution ~~in satisfaction of~~~~  
27 ~~the devise or transfer in trust, taking into consideration any~~  
28 ~~gains and losses realized from a prior the sale, prior to~~  
29 ~~distribution of the marital interest, of any property not~~  
30 ~~devised specifically, generally, or demonstratively devised.~~

31 ~~(5)(3) With the consent of all beneficiaries affected,~~

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1 A personal representative or a trustee is authorized to  
2 distribute any distributable assets, non-pro rata among the  
3 beneficiaries subject to the fiduciary's duty of impartiality  
4 ~~entitled thereto.~~

5 Section 161. Section 733.811, Florida Statutes, is  
6 amended to read:

7 733.811 Distribution; right or title of  
8 distributee.--If a distributee receives from a fiduciary an  
9 instrument transferring assets in kind, payment in  
10 distribution, or possession of specific property, the  
11 distributee has succeeded to the estate's interest in the  
12 assets as against all persons interested in the estate.  
13 However, the fiduciary may recover the assets or their value  
14 if the distribution was improper ~~Proof that a distributee has~~  
15 ~~received an instrument transferring assets in kind or payment~~  
16 ~~in distribution or possession of specific property from a~~  
17 ~~personal representative is conclusive evidence that the~~  
18 ~~distributee has succeeded to the interest of the estate in the~~  
19 ~~distributed assets, as against all persons interested in the~~  
20 ~~estate, but the personal representative may recover the assets~~  
21 ~~or their value if the distribution was improper.~~

22 Section 162. Section 733.812, Florida Statutes, is  
23 amended to read:

24 733.812 Improper distribution or payment; liability of  
25 distributee or payee.--~~Unless the distribution or payment no~~  
26 ~~longer can be questioned because of adjudication, estoppel, or~~  
27 ~~limitations, A distributee of property improperly distributed~~  
28 ~~or paid or a claimant who was paid improperly must paid, if he~~  
29 ~~or she has the property, is liable to return the assets or~~  
30 ~~funds property improperly received, and the income from those~~  
31 ~~assets or interest on the funds ~~its income~~ since distribution~~

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1 or payment, unless the distribution or payment cannot be  
2 questioned because of adjudication, estoppel, or limitations  
3 ~~to the personal representative or to the beneficiaries~~  
4 ~~entitled to it.~~ If the distributee or claimant ~~he or she~~ does  
5 not have the property, its ~~then he or she is~~ liable to return  
6 the value of the property ~~improperly received~~ at the date of  
7 disposition, ~~and its~~ income thereon, and gain received by the  
8 distributee or claimant must be returned ~~him or her~~.

9           Section 163. Section 733.813, Florida Statutes, is  
10 amended to read:

11           733.813 Purchasers from distributees protected.--If  
12 property distributed in kind, or a security interest in that  
13 property therein, is acquired by a purchaser or lender for  
14 value from a distributee ~~who has received an instrument of~~  
15 ~~distribution or possession from the personal representative~~,  
16 the purchaser or lender takes title free of any claims of the  
17 estate and incurs no personal liability to the estate, whether  
18 or not the distribution was proper. The ~~To be protected under~~  
19 ~~this provision a~~ purchaser or lender need not inquire whether  
20 a personal representative acted properly in making the  
21 distribution in kind.

22           Section 164. Section 733.814, Florida Statutes, is  
23 amended to read:

24           733.814 Partition for purpose of distribution.--When  
25 two or more beneficiaries ~~heirs or devisees~~ are entitled to  
26 distribution of undivided interests in any property, the  
27 personal representative or any beneficiary ~~one or more of the~~  
28 ~~beneficiaries~~ may petition the court before ~~closing~~ the estate  
29 is closed to ~~make partition.~~ ~~After formal notice to the~~  
30 ~~interested beneficiaries, the court shall~~ partition the  
31 property in the same manner as provided by law for civil

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1 actions of partition. The court may direct the personal  
2 representative to sell any property that cannot be partitioned  
3 without prejudice to the owners and that cannot be allotted  
4 equitably and conveniently ~~be allotted to any one party.~~

5 Section 165. Section 733.815, Florida Statutes, is  
6 amended to read:

7 733.815 Private contracts ~~agreements~~ among interested  
8 persons ~~distributees~~.--Subject to the rights of creditors and  
9 taxing authorities, ~~competent~~ interested persons may agree  
10 among themselves to alter the interests, shares, or amounts to  
11 which they are entitled ~~under the will or under the laws of~~  
12 ~~intestacy~~ in a written contract executed by them ~~all who are~~  
13 ~~affected~~. The personal representative shall abide by the terms  
14 of the contract ~~agreement~~, subject to the personal  
15 representative's ~~his or her~~ obligation to administer the  
16 estate for the benefit of interested persons who are not  
17 parties to the contract, and creditors, to pay ~~all taxes and~~  
18 ~~costs of administration, and to carry out the responsibilities~~  
19 ~~of his or her office for the benefit of any beneficiaries of~~  
20 ~~the decedent who are not parties to the agreement. Personal~~  
21 ~~representatives are not required to see to the performance of~~  
22 ~~trusts if the trustee is another person who is willing to~~  
23 ~~accept the trust~~. Trustees of a testamentary trust are  
24 interested persons ~~beneficiaries~~ for the purposes of this  
25 section. Nothing in this section ~~herein~~ relieves trustees of  
26 any duties owed to beneficiaries of trusts.

27 Section 166. Section 733.816, Florida Statutes, is  
28 amended to read:

29 733.816 Disposition of unclaimed property held by  
30 personal representatives.--

31 (1) In all cases in which there is unclaimed property



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1 in the hands of a personal representative that cannot be  
2 distributed or paid because of the inability to find the  
3 lawful owner ~~because of inability to find him or her~~ or  
4 because no lawful owner is known or because the lawful owner  
5 refuses to accept the property after a reasonable attempt to  
6 distribute it and after notice to that lawful owner, the court  
7 shall order the personal representative to sell the property  
8 and deposit the proceeds and cash already in hand, after  
9 retaining those amounts provided for in subsection (4), with  
10 the clerk and receive a receipt, and the clerk shall deposit  
11 the funds in the registry of the court to be disposed of as  
12 follows:

13 (a) If the value of the funds is \$500 or less, the  
14 clerk shall post a notice for 30 days at the courthouse door  
15 giving the amount involved, the name of the personal  
16 representative, and the other pertinent information that will  
17 put interested persons on notice.

18 (b) If the value of the funds is over \$500, the clerk  
19 shall publish the notice once a month for 2 consecutive months  
20 in a newspaper of general circulation in the county.

21  
22 After the expiration of 6 months from the posting or first  
23 publication, the clerk shall deposit the funds with the State  
24 Treasurer after deducting the clerk's ~~his or her~~ fees and the  
25 costs of publication.

26 (2) Upon receipt of the funds, the State Treasurer  
27 shall deposit them to the credit of the State School Fund, to  
28 become a part of the school fund. All interest and all income  
29 that may accrue from the money while so deposited shall belong  
30 to the fund. The funds so deposited shall constitute and be a  
31 permanent appropriation for payments by the State Treasurer in

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1 obedience to court orders entered as provided by subsection  
2 (3).

3 (3) Within 10 years from the date of deposit with the  
4 State Treasurer, on written petition to the court that  
5 directed the deposit of the funds and informal notice to the  
6 Department of Legal Affairs, and after proof of entitlement  
7 ~~his or her right to them~~, any person entitled to the funds  
8 before or after payment to the State Treasurer and deposit as  
9 provided by subsection (1) may obtain a court ~~an order of~~  
10 ~~court~~ directing the payment of the funds to that person ~~him or~~  
11 ~~her~~. All funds deposited with the State Treasurer and not  
12 claimed within 10 years from the date of deposit shall escheat  
13 to the state for the benefit of the State School Fund.

14 (4) The personal representative depositing assets with  
15 the clerk is permitted to retain from the funds ~~in his or her~~  
16 ~~possession~~ a sufficient amount to pay final costs of  
17 administration chargeable to the assets, ~~including fees~~  
18 ~~allowed pursuant to s. 733.617~~ accruing between the deposit of  
19 the funds with the clerk of the court and the order of  
20 discharge. Any funds so retained which are surplus shall be  
21 deposited with the clerk prior to discharge of the personal  
22 representative.

23 (5)(a) If a person entitled to the funds assigns the  
24 right ~~his or her rights~~ to receive payment or part payment to  
25 an attorney or private investigative agency which is duly  
26 licensed to do business in this state pursuant to a written  
27 agreement with that ~~such~~ person, the Department of Banking and  
28 Finance is authorized to make distribution in accordance with  
29 the ~~such~~ assignment.

30 (b) Payments made to an attorney or private  
31 investigative agency shall be promptly deposited into a trust

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1 or escrow account which is regularly maintained by the  
2 attorney or private investigative agency in a financial  
3 institution located in this state and authorized to accept  
4 these ~~such~~ deposits ~~and located in this state~~.

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

11 (d) The department shall not be civilly or criminally  
12 liable for any funds distributed pursuant to this subsection,  
13 provided the ~~such~~ distribution is made in good faith.

14 Section 167. Subsections (1) and (2), paragraph (a) of  
15 subsection (4), paragraph (c) of subsection (5), subsection  
16 (6), paragraph (a) of subsection (7), and subsection (11) of  
17 section 733.817, Florida Statutes, are amended to read:

18 733.817 Apportionment of estate taxes.--

19 (1) For purposes of this section:

20 (a) "Fiduciary" means a person other than the personal  
21 representative in possession of property included in the  
22 measure of the tax who is liable to the applicable taxing  
23 authority for payment of the entire tax to the extent of the  
24 value of the property in ~~his or her~~ possession.

25 (b) "Governing instrument" means a will, trust  
26 agreement, or any other document that controls the transfer of  
27 an asset on the occurrence of the event with respect to which  
28 the tax is being levied.

29 (c) "Gross estate" means the gross estate, as  
30 determined by the Internal Revenue Code with respect to the  
31 federal estate tax and the Florida estate tax, and as that

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1 ~~such~~ concept is otherwise determined by the estate,  
2 inheritance, or death tax laws of the particular state,  
3 country, or political subdivision whose tax is being  
4 apportioned.

5 (d) "Included in the measure of the tax" means that  
6 for each separate tax that an interest may incur, only  
7 interests included in the measure of that particular tax are  
8 considered. The term "included in the measure of the tax" does  
9 not include any interest, whether passing under the will or  
10 not, to the extent the interest is initially deductible from  
11 the gross estate, without regard to any subsequent reduction  
12 ~~diminution~~ of the deduction by reason of the charge of any  
13 part of the applicable tax to the interest. The term "included  
14 in the measure of the tax" does not include interests or  
15 amounts that are not included in the gross estate but are  
16 included in the amount upon which the applicable tax is  
17 computed, such as adjusted taxable gifts with respect to the  
18 federal estate tax. If an election is required for  
19 deductibility, an interest is not "initially deductible"  
20 unless the election for deductibility is allowed.

21 (e) "Internal Revenue Code" means the Internal Revenue  
22 Code of 1986, as amended from time to time.

23 (f) "Net tax" means the net tax payable to the  
24 particular state, country, or political subdivision whose tax  
25 is being apportioned, after taking into account all credits  
26 against the applicable tax except as provided in this section.  
27 With respect to the federal estate tax, "net tax" is  
28 determined after taking into account all credits against the  
29 tax except for the credit for foreign death taxes.

30 (g) "Nonresiduary devise" means any devise that is not  
31 a residuary devise.

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1 (h) "Nonresiduary interest" in connection with a trust  
2 means any interest in a trust which is not a residuary  
3 interest.

4 (i) "Recipient" means, with respect to property or an  
5 interest in property included in the gross estate, an heir at  
6 law in an intestate estate, devisee in a testate estate,  
7 beneficiary of a trust, beneficiary of an insurance policy,  
8 annuity, or other contractual right, surviving tenant, taker  
9 as a result of the exercise or in default of the exercise of a  
10 general power of appointment, person who receives or is to  
11 receive the property or an interest in the property, or person  
12 in possession of the property, other than a creditor.

13 (j) "Residuary devise" has the meaning set forth in s.  
14 731.201(31)~~(30)~~.

15 (k) "Residuary interest," in connection with a trust,  
16 means an interest in the assets of a trust which remain after  
17 provision for any distribution that is to be satisfied by  
18 reference to a specific property or type of property, fund,  
19 sum, or statutory amount.

20 (l) "Revocable trust" means a trust as described in s.  
21 733.707(3)~~as defined in s. 731.201(33)~~ ~~created by the~~  
22 ~~decedent to the extent that the decedent had at his or her~~  
23 ~~death the power to alter, amend, or revoke the trust either~~  
24 ~~alone or in conjunction with any other person.~~

25 (m) "State" means any state, territory, or possession  
26 of the United States, the District of Columbia, and the  
27 Commonwealth of Puerto Rico.

28 (n) "Tax" means any estate tax, inheritance tax,  
29 generation skipping transfer tax, or other tax levied or  
30 assessed under the laws of this or any other state, the United  
31 States, any other country, or any political subdivision of the

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1 foregoing, as finally determined, which is imposed as a result  
2 of the death of the decedent, including, without limitation,  
3 the tax assessed pursuant to s. 4980A of the Internal Revenue  
4 Code. The term also includes any interest and penalties  
5 imposed in addition to the tax. Unless the context indicates  
6 otherwise, the term "tax" means each separate tax.

7 (o) "Temporary interest" means an interest in income  
8 or an estate for a specific period of time or for life or for  
9 some other period controlled by reference to extrinsic events,  
10 whether or not in trust.

11 (p) "Tentative Florida tax" with respect to any  
12 property means the net Florida estate tax that would have been  
13 attributable to that property if no tax were payable to any  
14 other state in respect of that property.

15 (q) "Value" means the pecuniary worth of the interest  
16 involved as finally determined for purposes of the applicable  
17 tax after deducting any debt, expense, or other deduction  
18 chargeable to it for which a deduction was allowed in  
19 determining the amount of the applicable tax. A lien or other  
20 encumbrance is not regarded as chargeable to a particular  
21 interest to the extent that it will be paid from other  
22 interests. The value of an interest shall not be reduced by  
23 reason of the charge against it of any part of the tax.

24 (2) An interest in protected homestead property shall  
25 be exempt from the apportionment of taxes ~~if such interest~~  
26 ~~passes to a person to whom inures the decedent's exemption~~  
27 ~~from forced sale under the State Constitution.~~

28 (4)(a) Except as otherwise effectively directed by the  
29 governing instrument, if the Internal Revenue Code including,  
30 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,  
31 and 2603, ~~of the Internal Revenue Code~~ applies to apportion

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1 federal tax against recipients of certain interests, all net  
2 taxes, including taxes levied by the state attributable to  
3 each type of interest, shall be apportioned against the  
4 recipients of all interests of that type in the proportion  
5 that the value of each interest of that type included in the  
6 measure of the tax bears to the total of all interests of that  
7 type included in the measure of the tax.

8 (5) Except as provided above or as otherwise directed  
9 by the governing instrument, the net tax attributable to each  
10 interest shall be apportioned as follows:

11 (c) The net tax attributable to an interest in  
12 protected homestead ~~property which is exempt from~~  
13 ~~apportionment pursuant to subsection (2)~~ shall be apportioned  
14 against the recipients of other interests in the estate or  
15 passing under any revocable trust in the following order:

16 1. Class I: Recipients of interests not disposed of  
17 by the decedent's will or revocable trust that ~~which~~ are  
18 included in the measure of the federal estate tax.

19 2. Class II: Recipients of residuary devises and  
20 residuary interests that are included in the measure of the  
21 federal estate tax.

22 3. Class III: Recipients of nonresiduary devises and  
23 nonresiduary interests that are included in the measure of the  
24 federal estate tax. The net tax apportioned to a class, if  
25 any, pursuant to this paragraph shall be apportioned among the  
26 recipients in the class in the proportion that the value of  
27 the interest of each bears to the total value of all interests  
28 included in that class.

29 (6) The personal representative or fiduciary shall not  
30 be required to transfer to a recipient any property ~~in~~  
31 ~~possession of the personal representative or fiduciary which~~

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1 ~~he or she~~ reasonably anticipated to ~~anticipates~~ may be  
2 necessary for the payment of taxes. Further, the personal  
3 representative or fiduciary shall not be required to transfer  
4 any property ~~in possession of the personal representative or~~  
5 ~~fiduciary~~ to the recipient until the amount of the tax due  
6 from the recipient is paid by the recipient. If property is  
7 transferred before final apportionment of the tax, the  
8 recipient shall provide a bond or other security for his or  
9 her apportioned liability in the amount and form prescribed by  
10 the personal representative or fiduciary.

11 (7)(a) The personal representative may petition at any  
12 time for an order of apportionment. If no administration has  
13 been commenced at any time after 90 days from the decedent's  
14 death any fiduciary may petition for an order of apportionment  
15 in the court in which venue would be proper for administration  
16 of the decedent's estate. Formal notice of the petition for  
17 order of apportionment shall be given to all interested  
18 persons. At any time after 6 months from the decedent's death,  
19 any recipient may petition the ~~such~~ court for an order of  
20 apportionment.

21 (11) Nothing in this section shall limit the right of  
22 any person who has paid more than the amount of the tax  
23 apportionable to that ~~such~~ person, calculated as if all  
24 apportioned amounts would be collected, to obtain contribution  
25 from those who have not paid the full amount of the tax  
26 apportionable to them, calculated as if all apportioned  
27 amounts would be collected, and that right is hereby  
28 conferred. In any action to enforce contribution, the court  
29 shall award taxable costs as in chancery actions, including  
30 reasonable attorney's fees.

31 Section 168. Section 733.901, Florida Statutes, is



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1 amended to read:

2 733.901 ~~Distribution~~Final discharge.--

3 (1) After administration has been ~~When a personal~~  
4 ~~representative has completed the personal representative shall~~  
5 ~~be discharged~~ administration except for distribution, he or  
6 ~~she shall file a final accounting and a petition for discharge~~  
7 ~~that shall contain:~~

8 (a) ~~A complete report of all receipts and~~  
9 ~~disbursements since the date of the last annual accounting or,~~  
10 ~~if none, from the commencement of administration.~~

11 (b) ~~A statement that he or she has fully administered~~  
12 ~~the estate by making payment, settlement, or other disposition~~  
13 ~~of all claims and debts that were presented and the expenses~~  
14 ~~of administration.~~

15 (c) ~~The proposed distribution of the assets of the~~  
16 ~~estate.~~

17 (d) ~~Any prior distributions that have been made.~~

18 (e) ~~A statement that objections to this report or~~  
19 ~~proposed distribution of assets be filed within 30 days.~~

20  
21 ~~The final accounting and petition for discharge shall be filed~~  
22 ~~and served on all interested persons within 12 months after~~  
23 ~~issuance of letters for estates not required to file a federal~~  
24 ~~estate tax return, otherwise 12 months from the date the~~  
25 ~~return is due, unless the time is extended by the court for~~  
26 ~~cause shown after notice to interested persons. The petition~~  
27 ~~shall state the status of the estate and the reasons for the~~  
28 ~~extension.~~

29 (2) ~~If no objection to the accounting or petition for~~  
30 ~~discharge has been filed within 30 days from the date of~~  
31 ~~service of copies on interested persons, or if service has~~

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1 ~~been waived, the personal representative may distribute the~~  
2 ~~estate according to the plan of distribution set forth in the~~  
3 ~~petition without a court order. The assets shall be~~  
4 ~~distributed free from the claims of any interested person and,~~  
5 ~~upon receipt of evidence that the estate has been properly~~  
6 ~~distributed and that claims of creditors have been paid or~~  
7 ~~otherwise disposed of, the court shall enter an order~~  
8 ~~discharging the personal representative and releasing the~~  
9 ~~surety on any bond.~~

10 ~~(3) If an objection to the petition for discharge has~~  
11 ~~been filed within the time allowed, the court shall determine~~  
12 ~~the plan of distribution and, upon receipt of evidence that~~  
13 ~~the estate has been properly distributed and that claims of~~  
14 ~~creditors have been paid or otherwise disposed of, the court~~  
15 ~~shall enter an order discharging the personal representative~~  
16 ~~and releasing the surety on any bond.~~

17 ~~(4) The final accounting required under subsection (1)~~  
18 ~~may be waived upon a filing of a consent waiver with the~~  
19 ~~court, by all interested persons, acknowledging that they are~~  
20 ~~aware of their rights and that they waive the right to have a~~  
21 ~~final accounting.~~

22 ~~(5) The 30-day period contained in subsection (2) may~~  
23 ~~be waived upon written consent of all interested persons.~~

24 ~~(2)(6)~~ The discharge of the personal representative  
25 shall release the personal representative of the estate and  
26 shall bar any action against the personal representative, as  
27 such or individually, and the his or her surety.

28 Section 169. Section 733.903, Florida Statutes, is  
29 amended to read:

30 733.903 Subsequent administration.--The final  
31 settlement of an estate and the discharge of the personal

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1 ~~representative shall not prevent a revocation of the order of~~  
2 ~~discharge or the subsequent issuance of letters if other~~  
3 ~~property of the estate is discovered or if it becomes~~  
4 ~~necessary that further administration of the estate be had for~~  
5 ~~any cause. However,~~The order of discharge may not be revoked  
6 ~~under this section~~ based upon the discovery of a will or later  
7 will.

8 Section 170. Subsections (3) and (4) of section  
9 734.101, Florida Statutes, are amended to read:

10 734.101 Foreign personal representative.--

11 (3) Debtors who have not received a written demand for  
12 payment from a personal representative or curator appointed in  
13 this state within 60 days after appointment of a personal  
14 representative in any other state or country, and whose  
15 property in Florida is subject to a mortgage or other lien  
16 securing the debt held by the foreign personal representative,  
17 may pay the foreign personal representative after the  
18 expiration of 60 days from the date of ~~his or her~~ appointment  
19 of the foreign personnel representative. Thereafter, a  
20 satisfaction of the mortgage or lien executed by the foreign  
21 personal representative, with an authenticated copy of the his  
22 ~~or her~~ letters or other evidence of authority attached, may be  
23 recorded in the public records. The satisfaction shall be an  
24 effective discharge of the mortgage or lien, irrespective of  
25 whether the debtor making payment had received a written  
26 demand before paying the debt.

27 (4) All persons indebted to the estate of a decedent,  
28 or having possession of personal property belonging to the  
29 estate, who have received no written demand from a personal  
30 representative or curator appointed in this state for payment  
31 of the debt or the delivery of the property are authorized to

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1 pay the debt or to deliver the personal property to the  
2 foreign personal representative after the expiration of 60  
3 days from the date of ~~his or her~~ appointment of the foreign  
4 personnel representative.

5 Section 171. Section 734.102, Florida Statutes, is  
6 amended to read:

7 734.102 Ancillary administration.--

8 (1) If a nonresident of this state dies leaving assets  
9 in this state, credits due ~~him or her~~ from residents in this  
10 state, or liens on property in this state, a personal  
11 representative specifically designated in the decedent's will  
12 to administer the Florida property shall be entitled to have  
13 ancillary letters issued ~~to him or her~~, if qualified to act in  
14 Florida. Otherwise, the foreign personal representative of the  
15 decedent's estate shall be entitled to have letters issued ~~to~~  
16 ~~him or her~~, if qualified to act in Florida. If the foreign  
17 personal representative is not qualified to act in Florida and  
18 the will names an alternate or successor who is qualified to  
19 act in Florida, the alternate or successor shall be entitled  
20 to have letters issued ~~to him or her~~. Otherwise, those  
21 entitled to a majority interest of the Florida property may  
22 have letters issued to a personal representative selected by  
23 them who is qualified to act in Florida. If the decedent dies  
24 intestate and the foreign ~~domiciliary~~ personal representative  
25 is not qualified to act in Florida, the order of preference  
26 for appointment of a personal representative as prescribed in  
27 this code shall apply. If ancillary letters are applied for  
28 by other than the domiciliary personal representative, prior  
29 notice shall be given to any domiciliary personal  
30 representative.

31 (2) Ancillary administration shall be commenced as

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1 provided by the Florida Probate Rules.~~To entitle the~~  
2 ~~applicant to ancillary letters, an authenticated copy of so~~  
3 ~~much of the domiciliary proceedings shall be filed as will~~  
4 ~~show either:~~

5       ~~(a) The will, petition for probate, order admitting~~  
6 ~~the will to probate, and letters, if there are such; or~~

7       ~~(b) The petition for letters and the letters.~~

8       (3) ~~On filing the authenticated copy of a probated~~  
9 ~~will, including any probated codicils, the court shall~~  
10 ~~determine~~ If the will and any the codicils, are executed as  
11 required by the code, they shall be admitted to probate if  
12 any, comply with s. 732.502(1) or s. 732.502(2). ~~If they~~  
13 ~~comply, the court shall admit the will and any codicils to~~  
14 ~~record.~~

15       (4) The ancillary personal representative shall give  
16 bond as do personal representatives generally. All  
17 proceedings for appointment and administration of the estate  
18 shall be as similar to those in original administrations as  
19 possible.

20       (5) Unless creditors' claims are otherwise barred by  
21 s. 733.710, the ancillary personal representative shall cause  
22 a notice to creditors to be served and published according to  
23 the requirements of chapter 733. Claims not filed in  
24 accordance with chapter 733 shall be barred as provided in s.  
25 733.702.

26       (6)~~(5)~~ After the payment of all expenses of  
27 administration and claims against the estate, the court may  
28 order the remaining property held by the ancillary personal  
29 representative transferred to the foreign domiciliary personal  
30 representative or distributed to the beneficiaries ~~heirs or~~  
31 ~~devisees.~~

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1           ~~(7)~~(6) Ancillary personal representatives shall have  
 2 the same rights, powers, and authority as other personal  
 3 representatives in Florida to manage and settle estates; to  
 4 sell, lease, or mortgage local property; and to raise funds  
 5 for the payment of debts, claims, and devises in the  
 6 domiciliary jurisdiction. No property shall be sold, leased,  
 7 or mortgaged to pay a debt or claim that is barred by any  
 8 statute of limitation or of nonclaim of this state.

9           Section 172. Section 734.1025, Florida Statutes, is  
 10 amended to read:

11           734.1025 Nonresident decedent's testate estate with  
 12 property not exceeding ~~\$50,000~~\$25,000 in this state;  
 13 determination of claims.--

14           (1) When a nonresident decedent dies testate and  
 15 leaves property subject to administration in this state the  
 16 gross value of which does not exceed \$50,000 at the date of  
 17 death~~\$25,000~~, the foreign domiciliary personal representative  
 18 of the estate ~~may determine the question of claims in this~~  
 19 ~~state~~ before the expiration of 2 years after the decedent's  
 20 death may file ~~the 2-year period provided in s. 733.710 by~~  
 21 filing in the circuit court of the county where any property  
 22 is located an authenticated transcript of so much of the  
 23 foreign domiciliary proceedings as will show the will and  
 24 beneficiaries of the estate, as provided in the Florida  
 25 Probate Rules. The court shall admit the will and any codicils  
 26 to probate if they comply with s. 732.502(1) or (2).~~±~~

27           ~~(a) In a testate estate, the probated will and all~~  
 28 ~~probated codicils of the decedent; the order admitting them to~~  
 29 ~~record; the letters or their equivalent; and the part of the~~  
 30 ~~record showing the names of the devisees and heirs of the~~  
 31 ~~decedent or an affidavit of the domiciliary personal~~

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1 ~~representative reciting that the names are not shown or not~~  
2 ~~fully disclosed by the domiciliary record and specifying the~~  
3 ~~names. On presentation of the foregoing, the court shall~~  
4 ~~admit the will and any codicils to probate if they comply with~~  
5 ~~s. 732.502(1) or (2).~~

6 ~~(b) In an intestate estate, the authenticated copy of~~  
7 ~~letters of administration, or their equivalent, with the part~~  
8 ~~of the record showing the names of the heirs of the decedent~~  
9 ~~or an affidavit of the domiciliary personal representative~~  
10 ~~supplying the names, as provided in paragraph (a). On~~  
11 ~~presentation of the foregoing, the court shall order them~~  
12 ~~recorded.~~

13 ~~(2) After complying with the foregoing requirements,~~  
14 ~~The foreign domiciliary personal representative may shall~~  
15 ~~cause a notice to creditors to be served and published~~  
16 ~~according to the relevant requirements of chapter 733 s.~~  
17 ~~731.111, notifying all persons having claims or demands~~  
18 ~~against the estate to file them. Claims not filed in~~  
19 ~~accordance with chapter 733 shall be barred as provided in s.~~  
20 ~~733.702. If any claim is filed, a personal representative~~  
21 ~~shall be appointed as provided in the Florida Probate Rules.~~

22 ~~(3) The procedure for filing claims and objection to~~  
23 ~~them and for suing on them shall be the same as for other~~  
24 ~~estates, except as hereinafter provided.~~

25 ~~(4) If no claims are filed against the estate within~~  
26 ~~the time allowed, the court shall enter an order adjudging~~  
27 ~~that notice to creditors has been duly given and proof thereof~~  
28 ~~filed and that no claims have been filed against the estate or~~  
29 ~~that all claims have been satisfied.~~

30 ~~(5) If any claim is filed against the estate within~~  
31 ~~the time allowed, the court shall send to the domiciliary~~

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1 ~~personal representative a copy of the claim and a notice~~  
2 ~~setting a date for a hearing to appoint an ancillary personal~~  
3 ~~representative. At the hearing, the court shall appoint an~~  
4 ~~ancillary personal representative according to the preferences~~  
5 ~~as provided in s. 733.301.~~

6 ~~(6) If an ancillary personal representative is~~  
7 ~~appointed pursuant to subsection (5), the procedure for~~  
8 ~~filing, objecting to, and suing on claims shall be the same as~~  
9 ~~for other estates, except that the ancillary personal~~  
10 ~~representative appointed shall have not fewer than 30 days~~  
11 ~~from the date of his or her appointment within which to object~~  
12 ~~to any claim filed.~~

13 ~~(7) The filing by domiciliary personal representatives~~  
14 ~~of portions of the domiciliary probate proceedings as~~  
15 ~~specified in this section, and the barring of claims of~~  
16 ~~creditors in such estates by the publication of notice to~~  
17 ~~creditors as set forth in this section, in all cases prior to~~  
18 ~~June 25, 1980, are hereby validated and confirmed.~~

19 Section 173. Paragraph (a) of subsection (1) and  
20 subsection (3) of section 734.104, Florida Statutes, are  
21 amended to read:

22 734.104 Foreign wills; admission to record; effect on  
23 title.--

24 (1) An authenticated copy of the will of a nonresident  
25 that devises real property in this state, or any right, title,  
26 or interest in the property, may be admitted to record in any  
27 county of this state where the property is located at any time  
28 after 2 years from the death of the decedent or at any time  
29 after the domiciliary personal representative has been  
30 discharged if there has been no proceeding to administer the  
31 estate of the decedent in this state, provided:



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1           (a) The will was executed as required by Chapter 732  
2 ~~complies with s. 732.502 as to form and manner of execution;~~  
3 and

4           (3) If the court finds that the requirements of this  
5 section have been met ~~has been complied with~~, it shall enter  
6 an order admitting the foreign will to record.

7           Section 174. Section 734.201, Florida Statutes, is  
8 amended to read:

9           734.201 Jurisdiction by act of foreign personal  
10 representative.--A foreign personal representative submits  
11 personally to the jurisdiction of the courts of this state in  
12 any proceeding concerning the estate by:

13           (1) Filing authenticated copies of the domiciliary  
14 proceedings under s. 734.104; ~~734.103~~.

15           (2) Receiving payment of money or taking delivery of  
16 personal property, under s. 734.101; ~~or~~.

17           (3) Doing any act as a personal representative in this  
18 state that would have given the state jurisdiction over that  
19 person ~~him or her~~ as an individual.

20           Section 175. Section 734.202, Florida Statutes, is  
21 amended to read:

22           734.202 Jurisdiction by act of decedent.--In addition  
23 to jurisdiction conferred by s. 734.201, a foreign personal  
24 representative is subject to the jurisdiction of the courts of  
25 this state to the same extent that the ~~his or her~~ decedent was  
26 subject to jurisdiction immediately before death.

27           Section 176. Section 735.101, Florida Statutes, is  
28 repealed:

29           ~~735.101 Family administration; nature of~~  
30 ~~proceedings.--Family administration may be had in the~~  
31 ~~administration of a decedent's estate when it appears:~~

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1           ~~(1) In an intestate estate, that the heirs at law of~~  
2 ~~the decedent consist solely of a surviving spouse, lineal~~  
3 ~~descendants, and lineal ascendants, or any of them.~~

4           ~~(2) In a testate estate, that the beneficiaries under~~  
5 ~~the will consist of a surviving spouse, lineal descendants,~~  
6 ~~and lineal ascendants, or any of them, and that any specific~~  
7 ~~or general devise to others constitutes a minor part of the~~  
8 ~~decedent's estate.~~

9           ~~(3) In a testate estate, that the decedent's will does~~  
10 ~~not direct administration as required by chapter 733.~~

11           ~~(4) That the value of the gross estate, as of the date~~  
12 ~~of death, for federal estate tax purposes is less than~~  
13 ~~\$60,000.~~

14           ~~(5) That the entire estate consists of personal~~  
15 ~~property or, if real property forms part of the estate, that~~  
16 ~~administration under chapter 733 has proceeded to the point~~  
17 ~~that all claims of creditors have been processed or barred.~~

18           Section 177. Section 735.103, Florida Statutes, is  
19 repealed:

20           ~~735.103 Petition for family administration.--A~~  
21 ~~verified petition for family administration shall contain, in~~  
22 ~~addition to the statements required by s. 733.202, the~~  
23 ~~following:~~

24           ~~(1) Facts showing that petitioners are entitled to~~  
25 ~~family administration, as provided in s. 735.101.~~

26           ~~(2) A complete list of the assets of the gross estate~~  
27 ~~for federal estate tax purposes and their estimated value.~~

28           ~~(3) An appropriate statement that the estate is not~~  
29 ~~indebted or that provision for payment of debts has been made~~  
30 ~~or the claims are barred.~~

31           ~~(4) A proposed schedule of distribution of all assets~~

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1 ~~to those entitled thereto as surviving spouse, heirs,~~  
2 ~~beneficiaries, or creditors.~~

3  
4 ~~The petition shall be signed and verified by all beneficiaries~~  
5 ~~and the surviving spouse, if any. The petition may be signed~~  
6 ~~on behalf of a minor or an incompetent by her or his legal~~  
7 ~~guardian or, if none, by her or his natural guardian.~~

8 Section 178. Section 735.107, Florida Statutes, is  
9 repealed:

10 ~~735.107 Family administration distribution.--~~

11 ~~(1) Upon filing the petition for family~~  
12 ~~administration, the will, if any, shall be proved in~~  
13 ~~accordance with chapter 733 and be admitted to probate.~~

14 ~~(2) If the estate consists of personal property only,~~  
15 ~~then, after such hearing as the court may require, an order of~~  
16 ~~family administration may be entered allowing immediate~~  
17 ~~distribution of the assets to the persons entitled to them.~~

18 ~~(3) The order of family administration and the~~  
19 ~~distribution so entered shall have the following effect:~~

20 ~~(a) Those to whom specified parts of the decedent's~~  
21 ~~estate are assigned by the order shall be entitled to receive~~  
22 ~~and collect the parts and to have the parts transferred to~~  
23 ~~them. They may maintain actions to enforce the right.~~

24 ~~(b) Debtors of the decedent, those holding property of~~  
25 ~~the decedent, and those with whom securities or other property~~  
26 ~~of the decedent are registered are authorized and empowered to~~  
27 ~~comply with the order by paying, delivering, or transferring~~  
28 ~~to those specified in the order the parts of the decedent's~~  
29 ~~estate assigned to them by the order, and the persons so~~  
30 ~~paying, delivering, or transferring shall not be accountable~~  
31 ~~to anyone else for the property.~~

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1           ~~(c) After the entry of the order, bona fide purchasers~~  
2 ~~for value from those to whom property of the decedent may be~~  
3 ~~assigned by the order shall take the property free of all~~  
4 ~~claims of creditors of the decedent and all rights of the~~  
5 ~~surviving spouse and all other heirs and devisees.~~

6           ~~(d) Property of the decedent that is not exempt from~~  
7 ~~claims of creditors and that remains in the hands of those to~~  
8 ~~whom it may be assigned by the order shall continue to be~~  
9 ~~liable for claims against the decedent until barred as~~  
10 ~~provided in this law.~~

11           ~~(e) The petitioners for the order of family~~  
12 ~~administration shall be personally liable for all lawful~~  
13 ~~claims against the estate of the decedent, but only to the~~  
14 ~~extent of the value of the estate of the decedent actually~~  
15 ~~received by each petitioner, exclusive of the property exempt~~  
16 ~~from claims of creditors under the constitution and statutes~~  
17 ~~of Florida.~~

18           ~~(f) After 2 years from the death of the decedent,~~  
19 ~~neither her nor his estate nor those to whom it may be~~  
20 ~~assigned shall be liable for any claim against the decedent,~~  
21 ~~unless proceedings have been taken for the enforcement of the~~  
22 ~~claim.~~

23           ~~(g) Any heir or devisee of the decedent who was~~  
24 ~~lawfully entitled to share in the estate but was not included~~  
25 ~~in the order of family administration and distribution may~~  
26 ~~enforce her or his rights against those who procured the order~~  
27 ~~in appropriate proceedings and, when successful, shall be~~  
28 ~~awarded reasonable attorney's fees as an element of costs.~~

29           ~~(4)(a) If the estate of the decedent includes real~~  
30 ~~property and administration under chapter 733 has proceeded to~~  
31 ~~the point that all claims of creditors have been processed or~~

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1 ~~barred, or upon the satisfaction of all claims of creditors,~~  
2 ~~if any, and after such hearing as the court may require, an~~  
3 ~~order of family administration may be entered and the personal~~  
4 ~~representative authorized to make distribution of the assets~~  
5 ~~to the persons entitled to them. Upon evidence satisfactory~~  
6 ~~to the court that distribution has been made, the court shall~~  
7 ~~enter an order discharging the personal representative.~~

8 ~~(b) Any heir or devisee of the decedent who was~~  
9 ~~lawfully entitled to share in the estate but who was not~~  
10 ~~included in the order of family administration and~~  
11 ~~distribution may enforce her or his rights against those who~~  
12 ~~procured the order in appropriate proceedings and, when~~  
13 ~~successful, shall be awarded reasonable attorney's fees as an~~  
14 ~~element of costs.~~

15 Section 179. Subsection (2) of section 735.201,  
16 Florida Statutes, is amended to read:

17 735.201 Summary administration; nature of  
18 proceedings.--Summary administration may be had in the  
19 administration of either a resident or nonresident decedent's  
20 estate, when it appears:

21 (2) That the value of the entire estate subject to  
22 administration in this state, less the value of property  
23 exempt from the claims of creditors, does not exceed \$75,000  
24 ~~\$25,000~~ or that the decedent has been dead for more than 2  
25 years.

26 Section 180. Section 735.203, Florida Statutes, is  
27 amended to read:

28 735.203 Petition for summary administration.--

29 (1) A petition for summary administration may be filed  
30 by any beneficiary, ~~heir at law~~, or person nominated as  
31 personal representative in the decedent's will offered for

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1 ~~probate, and shall be signed and verified by.~~ The petition  
 2 must be signed and verified by  
 3 ~~(a) the surviving spouse, if any and any; the heirs at~~  
 4 ~~law or beneficiaries.~~  
 5 (2) If a person named in subsection (1) has died, is  
 6 incapacitated, or is a minor, or has conveyed or transferred  
 7 all interest in the property of the estate, then, as to that  
 8 person, the petition must be signed and certified by:  
 9 (a) The personal representative, if any, of a deceased  
 10 person or, if none, the surviving spouse, if any, and the  
 11 beneficiaries;  
 12 (b) The guardian of an incapacitated person or a  
 13 minor; or  
 14 (c) The grantee or transferee of any of them shall be  
 15 authorized to sign and verify the petition instead of the  
 16 beneficiary or surviving spouse.  
 17 (3) The joinder in, or consent to, a petition for  
 18 summary administration is not required of a beneficiary who  
 19 will receive full distributive share under the proposed  
 20 distribution. Any beneficiary not joining or consenting shall  
 21 receive formal notice of the petition. who are sui juris; and  
 22 ~~the guardians of any heirs at law or beneficiaries who are not~~  
 23 ~~sui juris; or~~  
 24 ~~(b) The persons described by s. 735.209.~~  
 25 ~~(2) A petition for summary administration shall~~  
 26 ~~contain, in addition to the statements required by s.~~  
 27 ~~733.202(2)(b) and (c), the following:~~  
 28 ~~(a) Facts showing that petitioners are entitled to~~  
 29 ~~summary administration as provided in s. 735.201.~~  
 30 ~~(b) A complete list of the assets of the estate and~~  
 31 ~~their estimated value, together with those assets claimed to~~

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1 ~~be exempt.~~

2 ~~(c) A statement that the estate is not indebted or~~  
3 ~~that provision for payment of debts has been made.~~

4 ~~(d) A proposed schedule of distribution of all assets~~  
5 ~~to those entitled thereto as surviving spouse, beneficiaries,~~  
6 ~~or creditors.~~

7 Section 181. Section 735.206, Florida Statutes, is  
8 amended to read:

9 735.206 Summary administration distribution.--

10 (1) Upon the filing of the petition for summary  
11 administration, the will, if any, shall be proved in  
12 accordance with chapter 733 and be admitted to probate.

13 (2) Prior to entry of the order of summary  
14 administration, the petitioner shall make a diligent search  
15 and reasonable inquiry for any known or reasonably  
16 ascertainable creditors, serve a copy of the petition on those  
17 creditors, and make provision for payment for those creditors  
18 to the extent that assets are available.

19 ~~(3)(2) The court may enter After such hearing as the~~  
20 ~~court may require,an order of summary administration may be~~  
21 ~~entered allowing immediate distribution of the assets to the~~  
22 ~~persons entitled to them.~~

23 ~~(4)(3) The order of summary administration and~~  
24 ~~distribution so entered shall have the following effect:~~

25 (a) Those to whom specified parts of the decedent's  
26 estate, including exempt property, are assigned by the order  
27 shall be entitled to receive and collect the parts and to have  
28 the parts transferred to them. They may maintain actions to  
29 enforce the right.

30 (b) Debtors of the decedent, those holding property of  
31 the decedent, and those with whom securities or other property

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1 of the decedent are registered are authorized and empowered to  
2 comply with the order by paying, delivering, or transferring  
3 to those specified in the order the parts of the decedent's  
4 estate assigned to them by the order, and the persons so  
5 paying, delivering, or transferring shall not be accountable  
6 to anyone else for the property.

7 (c) After the entry of the order, bona fide purchasers  
8 for value from those to whom property of the decedent may be  
9 assigned by the order shall take the property free of all  
10 claims of creditors of the decedent and all rights of the  
11 surviving spouse and all other beneficiaries ~~heirs and~~  
12 ~~devisees~~.

13 (d) Property of the decedent that is not exempt from  
14 claims of creditors and that remains in the hands of those to  
15 whom it may be assigned by the order shall continue to be  
16 liable for claims against the decedent until barred as  
17 provided in the code this law. Any known or reasonably  
18 ascertainable creditor who did not receive notice and for whom  
19 provision for payment was not made may enforce the claim and,  
20 if the creditor prevails, shall be awarded reasonable  
21 attorneys fees as an element of costs against those who joined  
22 in the petition.

23 (e) The recipients of the decedent's property under  
24 ~~petitioners for~~ the order of summary administration shall be  
25 personally liable for a pro rata share of all lawful claims  
26 against the estate of the decedent, but only to the extent of  
27 the value of the estate of the decedent actually received by  
28 each recipient ~~petitioner~~, exclusive of the property exempt  
29 from claims of creditors under the constitution and statutes  
30 of Florida.

31 (f) After 2 years from the death of the decedent,



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1 neither the decedent's estate nor those to whom it may be  
2 assigned shall be liable for any claim against the decedent,  
3 unless proceedings have been taken for the enforcement of the  
4 claim.

5 (g) Any heir or devisee of the decedent who was  
6 lawfully entitled to share in the estate but who was not  
7 included in the order of summary administration and  
8 distribution may enforce all ~~his or her~~ rights in appropriate  
9 proceedings against those who procured the order and, if when  
10 successful, shall be awarded reasonable attorney's fees as an  
11 element of costs.

12 Section 182. Section 735.2063, Florida Statutes, is  
13 amended to read:

14 735.2063 Notice to creditors.--

15 (1) Any person who has obtained ~~received~~ an order of  
16 summary administration may publish a notice to creditors  
17 according to the relevant requirements of s. 733.2121 ~~731.111~~,  
18 notifying all persons having claims or demands against the  
19 estate of the decedent that an order of summary administration  
20 has been entered by the court. The ~~Such~~ notice shall ~~will~~  
21 specify the total ~~cash~~ value of the estate and the names and  
22 addresses of those to whom it has been assigned by the ~~such~~  
23 order. ~~Such notice, if published, shall be published once a~~  
24 ~~week for 2 consecutive weeks in a newspaper published in the~~  
25 ~~county where such order was entered, and proof of publication~~  
26 ~~of such notice shall be filed with the court.~~

27 (2) If proof of publication of the ~~such~~ notice is  
28 filed with the court, all claims and demands of creditors  
29 against the estate of the decedent who are not known or are  
30 reasonably ascertainable shall be forever barred unless the  
31 ~~such~~ claims and demands are filed with the court within 3

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1 months after ~~from~~ the first publication of the ~~such~~ notice.

2 Section 183. Section 735.209, Florida Statutes, is  
3 repealed:

4 ~~735.209 Joinder of heirs, devisees, or surviving  
5 spouse in summary administration.--~~

6 ~~(1) When any heir, devisee, or surviving spouse is  
7 authorized or required under this part to join in any  
8 agreement or petition and any such person has died, become  
9 incompetent or is a minor, or has conveyed or transferred all  
10 of his or her interest in the property of the estate, then:~~

11 ~~(a) The heirs, devisees, and surviving spouse, if any,  
12 of a deceased person,~~

13 ~~(b) The personal representative, if any, of the estate  
14 of a deceased person,~~

15 ~~(c) The guardian of an incompetent or minor, or~~

16 ~~(d) The grantee or transferee of any of them~~

17

18 ~~shall be authorized to join in such agreement or petition  
19 instead of the heir, devisee, or surviving spouse.~~

20 ~~(2) The joinder in, or consent to, a petition for  
21 summary administration is not required of an heir or  
22 beneficiary who will receive his or her full distributive  
23 share under the proposed distribution. Any beneficiary not  
24 joining or consenting shall receive formal notice of the  
25 petition.~~

26 Section 184. Subsection (3) of section 735.301,  
27 Florida Statutes, is amended to read:

28 735.301 Disposition without administration.--

29 (3) Any person, firm, or corporation paying,  
30 delivering, or transferring property under the authorization  
31 shall be forever discharged from ~~any~~ liability thereon.

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1           Section 185. Section 735.302, Florida Statutes, is  
2 amended to read:

3           735.302 Income tax refunds in certain cases.--

4           (1) In any case when the United States Treasury  
5 Department determines that an overpayment of federal income  
6 tax exists and the person in whose favor the overpayment is  
7 determined is dead at the time the overpayment of tax is to be  
8 refunded, and irrespective of whether the decedent had filed a  
9 joint and several or separate income tax return, the amount of  
10 the overpayment, if not in excess of \$2,500~~\$500~~, may be  
11 refunded as follows:

12           (a) Directly to the surviving spouse on his or her  
13 verified application; or

14           (b) If there is no surviving spouse, to one of the  
15 decedent's children who is designated in a verified  
16 application purporting to be executed by all of the decedent's  
17 children over the age of 14 years.

18  
19 In either event, the application must show that the decedent  
20 was not indebted, that provision has been made for the payment  
21 of the decedent's debts, or that the entire estate is exempt  
22 from the claims of creditors under the constitution and  
23 statutes of the state, and that no administration of the  
24 estate, including summary administration, has been initiated  
25 and that none is planned, to the knowledge of the applicant.

26           (2) If a refund is made to the surviving spouse or  
27 designated child pursuant to the application, the refund shall  
28 operate as a complete discharge to the United States from  
29 liability from any action, claim, or demand by any beneficiary  
30 of the decedent or other person. ~~Nothing in~~ This section  
31 shall be construed as establishing the ownership or rights of

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1 the payee any person in the refund ~~so distributed~~.

2 Section 186. Section 737.208, Florida Statutes, is  
3 created to read:

4 737.208 Administration pending outcome of contest or  
5 other proceeding.--

6 (1) Pending the outcome of a proceeding filed to  
7 determine the validity of all or part of a trust or the  
8 beneficiaries of all or part of a trust, the trustee shall  
9 proceed with the administration of the trust as if no  
10 proceeding had been commenced, except that no distribution may  
11 be made to a beneficiary in contravention of the rights of  
12 those persons that may be affected by the outcome of the  
13 proceeding.

14 (2) Upon motion of a party and after notice to  
15 interested persons, a court may, upon good cause shown, make  
16 an exception to the prohibition under subsection (1) and  
17 authorize the trustee to distribute trust assets to a  
18 beneficiary subject to any conditions the court, in its  
19 discretion, may impose, including the posting of bond by the  
20 beneficiary.

21 Section 187. Section 737.3054, Florida Statutes, is  
22 amended to read:

23 737.3054 Trustee's duty to pay expenses and  
24 obligations of grantor's ~~settlor's~~ estate.--

25 (1) A trustee of a trust described in s. 733.707(3)  
26 shall pay to the personal representative of a grantor's  
27 ~~settlor's~~ estate any amounts that the personal representative  
28 certifies in writing to the trustee are required to pay the  
29 expenses of the administration and obligations of the  
30 grantor's ~~settlor's~~ estate ~~and the enforceable claims of the~~  
31 ~~settlor's creditors~~. Payments made by a trustee, unless

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1 otherwise provided in the trust instrument, must be charged as  
2 expenses of the trust without a contribution from anyone. The  
3 interests ~~interest~~ of all beneficiaries of such a trust are  
4 subject to the provisions of this subsection; however, the  
5 payments must be made from assets or property or the proceeds  
6 thereof, other than assets proscribed in s. 733.707(3), which  
7 are included in the grantor's ~~settlor's~~ gross estate for  
8 federal estate tax purposes.

9 (2) Unless a grantor ~~settlor~~ provides by will, or  
10 designates in a trust described in s. 733.707(3) ~~the~~ funds or  
11 property passing under the ~~a trust described in s. 733.707(3)~~  
12 to be so used, the expenses of the administration and  
13 obligations of the grantor's ~~settlor's~~ estate ~~and enforceable~~  
14 ~~claims of the settlor's creditors~~ must be paid from the trust  
15 in the following order:

16 (a) Property of the residue of the trust remaining  
17 after all distributions that are to be satisfied by reference  
18 to a specific property or type of property, fund, or sum;

19 (b) Property that is not to be distributed from  
20 specified or identified property or a specified or identified  
21 item of property; and

22 (c) Property that is to be distributed from specified  
23 or identified property or a specified or identified item of  
24 property.

25 (3) Trust distributions that are to be satisfied from  
26 specified or identified property must be classed as  
27 distributions to be satisfied from the general assets of the  
28 trust and not otherwise disposed of in the trust instrument  
29 upon the failure or insufficiency of funds or property from  
30 which payment should be made, to the extent of the  
31 insufficiency. Trust distributions given for valuable

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1 consideration abate with other distributions of the same class  
2 only to the extent of the excess over the value of the  
3 consideration until all others of the same class are  
4 exhausted. Except as provided in this section, trust  
5 distributions abate equally and ratably and without preference  
6 or priority between real and personal property. When a  
7 specified or identified item of property that has been  
8 designated for distribution in the trust instrument or that is  
9 charged with a distribution is sold or taken by the trustee,  
10 other beneficiaries shall contribute according to their  
11 respective interests to the beneficiary whose property has  
12 been sold or taken, and before distribution the trustee shall  
13 determine the amounts of the respective contributions, and  
14 they must be paid or withheld before distribution is made.

15 (4) The trustee shall pay the expenses of trust  
16 administration, including compensation of trustees and their  
17 attorneys, before and in preference to the expenses of the  
18 administration and obligations of the grantor's ~~settlor's~~  
19 estate ~~and enforceable claims of the settlor's creditors.~~

20 Section 188. Section 737.306, Florida Statutes, is  
21 amended to read:

22 737.306 Personal liability of trustee.--

23 (1)(a) Unless otherwise provided in the contract, a  
24 trustee is not personally liable on contracts, except  
25 contracts for attorneys' fees, properly entered into in the  
26 trustee's fiduciary capacity in the course of administration  
27 of the trust estate unless the trustee ~~he or she~~ fails to  
28 reveal that ~~his or her~~ representative capacity and identify  
29 the trust estate in the contract.

30 (b) A trustee is personally liable for obligations  
31 arising from ownership or control of property of the trust

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1 estate or for torts committed in the course of administration  
2 of the trust estate only if the trustee is personally at  
3 fault.

4 (c) Claims based on contracts, except contracts for  
5 attorneys' fees, entered into by a trustee in his or her  
6 fiduciary capacity, on obligations arising from ownership or  
7 control of the trust estate, or on torts committed in the  
8 course of trust administration may be asserted against the  
9 trust estate by proceeding against the trustee in the  
10 trustee's his or her fiduciary capacity, whether or not the  
11 trustee is personally liable.

12 (2) Issues of liability between the trust estate and  
13 the trustee individually may be determined in a proceeding for  
14 accounting, surcharge, or indemnification, or in any other  
15 appropriate proceeding.

16 (3) A successor trustee is not personally liable for  
17 any action taken or omitted to be taken by any prior trustee;  
18 nor does any successor trustee have a duty to institute any  
19 action against any prior trustee, or file any claim against  
20 any prior trustee's estate, for any of the prior trustee's  
21 acts or omissions as trustee under any of the following  
22 circumstances:

23 (a) The successor trustee succeeds a trustee who was  
24 also the grantor of a trust that was revocable during the time  
25 that the grantor served as trustee;

26 (b) As to any beneficiary who has waived any  
27 accounting required by s. 737.303, but only as to the periods  
28 included in the ~~such~~ waiver;

29 (c) As to any beneficiary who has released the  
30 successor trustee from the ~~such~~ duty to institute any action  
31 or file any claim;

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1 (d) As to any person who is not a beneficiary within  
2 the meaning of s. 737.303(4)(b); or

3 (e) As to any beneficiary described in s.  
4 737.303(4)(b):

5 1. If a super majority of the reasonably ascertainable  
6 current income or principal beneficiaries described in s.  
7 737.303(4)(b)1. and a super majority of the reasonably  
8 ascertainable remainder beneficiaries described in s.  
9 737.303(4)(b)2. have released the successor trustee;

10 2. If the beneficiary has not delivered a written  
11 request to the successor trustee to institute an action or  
12 file a claim against the prior trustee within 6 months after  
13 the date of the successor trustee's acceptance of the trust,  
14 if the successor trustee has notified the beneficiary in  
15 writing of its acceptance in accordance with s. 737.303(1) and  
16 that ~~such~~ writing advises the beneficiary that, unless the  
17 beneficiary delivers the ~~such~~ written request within 6 months  
18 after the date of acceptance, the ~~his or her~~ right to proceed  
19 against the successor trustee will be barred pursuant to this  
20 section; or

21 3. For any action or claim that the beneficiary is  
22 barred from bringing against the prior trustee.

23 ~~(4)(a) Two years after the death of a settlor, neither~~  
24 ~~a trust described in s. 733.707(3) as established by the~~  
25 ~~settlor, the trustee of the trust, nor any beneficiary may be~~  
26 ~~held liable for any claim or cause of action against the~~  
27 ~~settlor by a creditor who seeks to recover from the trust,~~  
28 ~~trustee, or beneficiary.~~

29 ~~(b) This subsection does not apply to a creditor who~~  
30 ~~has timely filed a claim against the settlor's estate under s.~~  
31 ~~733.702 within 2 years after the settlor's death and whose~~



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1 ~~claim has not been paid or otherwise disposed of, even if the~~  
2 ~~settlor's estate proceedings have been closed or otherwise~~  
3 ~~completed.~~

4 ~~(c) This subsection does not affect the lien of a duly~~  
5 ~~recorded mortgage or security interest or the right to~~  
6 ~~foreclose and enforce the mortgage or lien.~~

7 ~~(f)(5)~~ For the purposes of this section, a super  
8 majority of beneficiaries means at least two-thirds in  
9 interest of the beneficiaries if the interests of the  
10 beneficiaries are reasonably ascertainable; otherwise, it  
11 means at least two-thirds in number of the beneficiaries. A  
12 release or waiver under this section may be exercised by a  
13 legal representative or natural guardian of the beneficiary  
14 without the filing of any proceeding or approval of any court.  
15 Nothing in this subsection~~(3)~~ affects any liability of the  
16 prior trustee or the right of the successor trustee or any  
17 beneficiary to pursue an action or claim against the prior  
18 trustee.

19 Section 189. Section 737.3061, Florida Statutes, is  
20 created to read:

21 737.3061 Limitations on actions against certain  
22 trusts.--

23 (1) After the death of a grantor, no creditor of the  
24 grantor may bring, maintain, or continue any direct action  
25 against a trust described in s. 733.707(3), the trustee of the  
26 trust or any beneficiary of the trust that is dependent on the  
27 individual liability of the grantor. Those claims and causes  
28 of action against the grantor shall be presented and enforced  
29 against the grantor's estate as provided in part VII of  
30 chapter 733, and the personal representative of the grantor's  
31 estate may obtain payment from the trustee of a trust

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1 described in s. 733.707(3) as provided in ss. 733.607(2),  
2 733.707(3), and 737.3054(1).

3 (2) This section shall not preclude a direct action  
4 against a trust described in s. 733.707(3), the trustee of the  
5 trust, or a beneficiary of the trust that is not dependent on  
6 the individual liability of the grantor.

7 (3) This section does not affect the lien of any duly  
8 recorded mortgage or security interest or the lien of any  
9 person in possession of personal property or the right to  
10 foreclose and enforce the mortgage or lien.

11 Section 190. Section 737.308, Florida Statutes, is  
12 amended to read:

13 737.308 Notice of trust.--

14 (1) Upon the death of a grantor ~~settlor~~ of a trust  
15 described in s. 733.707(3), the trustee must file a notice of  
16 trust with the court of the county of the grantor's ~~settlor's~~  
17 domicile and the court having jurisdiction of the grantor's  
18 ~~settlor's~~ estate.

19 (2) The notice of trust must contain the name of the  
20 grantor ~~settlor~~, the grantor's ~~settlor's~~ date of death, the  
21 title of the trust, if any, the date of the trust, and the  
22 name and address of the trustee.

23 (3) If the grantor's ~~settlor's~~ probate proceeding has  
24 been commenced, the clerk must notify the trustee in writing  
25 of the date of the commencement of the probate proceeding and  
26 the file number.

27 (4) The clerk shall file and index the notice of trust  
28 in the same manner as a caveat, unless there exists a probate  
29 proceeding for the grantor's ~~settlor's~~ estate in which case  
30 the notice of trust must be filed in the probate proceeding  
31 and the clerk shall send a copy to the personal

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1 representative.

2 (5) The clerk shall send a copy of any caveat filed  
3 regarding the grantor settlor to the trustee, and the Notice  
4 of Trust to any caveator, unless there is a probate proceeding  
5 pending and the personal representative and the trustee are  
6 the same.

7 ~~(6) In any proceeding affecting the expenses of the~~  
8 ~~administration of the estate, or any claims described in s.~~  
9 ~~733.702(1), the trustee of a trust described in s. 733.707(3)~~  
10 ~~is an interested person in the administration of the grantor's~~  
11 ~~estate.~~

12 (6)(7) Any proceeding affecting the expenses of the  
13 administration or obligations of the grantor's estate ~~or any~~  
14 ~~claims described in s. 733.702(1)~~ prior to the trustee filing  
15 a notice of trust are binding upon the trustee.

16 (7)(8) The trustee's failure to file the notice of  
17 trust does not affect the trustee's obligation to pay expenses  
18 of administration and obligations of the grantor's estate  
19 ~~enforceable claims~~ as provided in s. 733.607(2).

20 Section 191. Section 215.965, Florida Statutes, is  
21 amended to read:

22 215.965 Disbursement of state moneys.--Except as  
23 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.  
24 717.124(5), s. 732.107(5)~~(6)~~, or s. 733.816(5), all moneys in  
25 the State Treasury shall be disbursed by state warrant, drawn  
26 by the Comptroller upon the State Treasury and payable to the  
27 ultimate beneficiary. This authorization shall include  
28 electronic disbursement.

29 Section 192. Subsection (3) of section 660.46, Florida  
30 Statutes, is amended to read:

31 660.46 Substitution of fiduciaries.--

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1           (3) Unless a waiver or consent shall be filed in the  
2 proceedings as provided in subsection (4), the provisions of  
3 s. 731.301(1)~~(a)~~, ~~(c)~~, and (2)~~(d)~~ shall apply with respect to  
4 notice of the proceedings to all persons who are then  
5 cofiduciaries with the original fiduciary, other than a person  
6 joining as a petitioner in the proceedings; to all persons  
7 named in the governing instrument as substitutes or successors  
8 to the fiduciary capacity of the original fiduciary; to the  
9 persons then living who are entitled under the governing  
10 instrument to appoint a substitute or successor to act in the  
11 fiduciary capacity of the original fiduciary; to all vested  
12 beneficiaries of the fiduciary account; and to all then-living  
13 originators of the governing instrument. Unless a waiver or  
14 consent shall be filed in the proceedings as provided in  
15 subsection (4), the provisions of s. 731.301~~(2)~~ shall apply  
16 with respect to notice to all contingent beneficiaries of the  
17 fiduciary account. Only the persons or classes of persons  
18 described in the foregoing provisions of this subsection shall  
19 be deemed to be interested persons for the purposes of this  
20 section and the proceedings and notices provided for in this  
21 section; and the provisions of ss. 731.301(3) and  
22 731.303(3)~~(4)~~ and (4)~~(5)~~, relating to notice requirements, the  
23 effect of notice, and representation of interests, shall apply  
24 to the proceedings provided for in this section.

25           Section 193. Subsection (1) of section 737.111,  
26 Florida Statutes, is amended to read:

27           737.111 Execution requirements for express trusts.--

28           (1) The testamentary aspects of a trust defined in s.  
29 731.201(34)~~(33)~~, are invalid unless the trust instrument is  
30 executed by the grantor ~~settlor~~ with the formalities required  
31 for the execution of a will.

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1           Section 194. In editing manuscript for the next  
2 official version of the Florida Statutes, the Division of  
3 Statutory Revision of the Office of Legislative Services is  
4 directed to:

5           (1) Change the title of Part II of Chapter 732,  
6 Florida Statutes, from "Elective Share of Surviving Spouse" to  
7 "Elective Share of Surviving Spouse; Rights in Community  
8 Property."

9           (2) Change the title of Part III of Chapter 733,  
10 Florida Statutes, from "Priority to Administer and  
11 Qualifications of Personal Representative" to "Preference in  
12 Appointment and Qualifications of Personal Representative."

13           (3) Change the title of Part IV of Chapter 733,  
14 Florida Statutes, from "Appointment of Personal  
15 Representative; Bonds" to "Fiduciary Bonds."

16           (4) Change the title of Part V of Chapter 733, Florida  
17 Statutes, from "Curators; Successor Personal Representative;  
18 Removal" to "Curators; Resignation and Removal of Personal  
19 Representatives."

20  
21

22 ===== T I T L E   A M E N D M E N T =====

23 And the title is amended as follows:

24           Delete everything before the enacting clause

25  
26

and insert:

                          A bill to be entitled

          An act relating to probate; amending s. 63.172,  
          F.S.; providing for the right of inheritance  
          with respect to adoption; amending s. 409.9101,  
          F.S.; revising language with respect to

31

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1 recovery of payments made on behalf of certain  
2 Medicaid-eligible persons; amending s. 655.936,  
3 F.S., relating to the opening of a decedent's  
4 safe-deposit box; amending s. 731.005, F.S.,  
5 relating to the Florida Probate Code; amending  
6 s. 731.011, F.S.; providing reference to the  
7 Florida Probate Rules with respect to the  
8 determination of substantive rights under the  
9 Florida Probate Code; amending s. 731.104,  
10 F.S.; revising language with respect to the  
11 verification of documents; amending s. 731.106,  
12 F.S., relating to the assets of  
13 nondomiciliaries; repealing s. 731.107, F.S.,  
14 relating to adversary proceedings; amending s.  
15 731.110, F.S.; revising language with respect  
16 to proceedings concerning caveat; repealing s.  
17 731.111, F.S., relating to notice to creditors;  
18 amending s. 731.201, F.S.; revising general  
19 definitions with respect to the Florida Probate  
20 Code; amending s. 731.301, F.S.; revising  
21 language with respect to notice; amending s.  
22 731.303, F.S., relating to representation;  
23 amending s. 732.101, F.S., relating to  
24 intestate estates; amending s. 732.102, F.S.;  
25 revising language with respect to the share of  
26 the spouse; increasing the monetary amount of  
27 certain shares; amending s. 732.103, F.S.,  
28 relating to the share of certain heirs;  
29 amending s. 732.107, F.S.; clarifying  
30 provisions; revising a filing date; revising  
31 certain provisions regarding owner's

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1 representation; amending s. 732.1101, F.S.;

2 providing that aliens shall have the same right

3 of inheritance as citizens; amending s.

4 732.2025, F.S.; redefining the term "qualifying

5 special needs trust" or "supplemental needs

6 trust"; amending s. 732.2035, F.S.; redefining

7 the term "decedent's ownership interest";

8 amending s. 732.2045, F.S.; adding an exclusion

9 to the elective share for property that is part

10 of the protected homestead; amending s.

11 732.2055, F.S.; redefining "value" for purposes

12 of calculating the elective estate; amending s.

13 732.2075, F.S.; revising the formula for

14 payment of the elective share; amending s.

15 732.2085, F.S.; adding a cross reference;

16 amending s. 732.2095, F.S.; correcting a cross

17 reference; modifying the formula for

18 determining the fair market value of assets

19 regarding the elective share; amending s.

20 732.2105, F.S.; revising the effect of an

21 elective share election on other estate

22 interests; amending s. 732.2125, F.S.; revising

23 language with respect to the right of election;

24 amending s. 732.2135, F.S.; revising language

25 with respect to time of election, extensions,

26 and withdrawal; amending s. 732.2145, F.S.;

27 revising language with respect to the order of

28 contribution; amending s. 732.2155, F.S.;

29 revising language with respect to the effective

30 date of certain trusts; providing for

31 applicability of certain provisions under

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1 specified circumstances; amending s. 732.218,  
2 F.S.; revising language with respect to  
3 rebuttable presumptions; amending s. 732.219,  
4 F.S., relating to disposition upon death;  
5 amending s. 732.221, F.S.; revising language  
6 with respect to perfection of title of personal  
7 representative or beneficiary; amending s.  
8 732.222, F.S., relating to the purchaser for  
9 value or lender; amending s. 732.223, F.S.;

10 revising language with respect to perfection of  
11 title of surviving spouse; amending s. 732.302,  
12 F.S.; revising language with respect to  
13 pretermitted children; amending s. 732.401,  
14 F.S.; revising language with respect to descent  
15 of homestead; amending s. 732.4015, F.S.;

16 revising language with respect to the  
17 definition of "owner" and "devise" concerning  
18 homestead; amending s. 732.402, F.S.; revising  
19 language with respect to exempt property;  
20 amending s. 732.403, F.S.; revising language  
21 with respect to family allowance; amending s.  
22 732.501, F.S.; revising language with respect  
23 to who may make a will; amending s. 732.502,  
24 F.S.; revising language with respect to  
25 execution of wills; amending s. 732.503, F.S.;

26 revising language with respect to self-proof of  
27 will; amending s. 732.505, F.S.; revising  
28 language with respect to revocation by writing;  
29 amending s. 732.507, F.S.; revising language  
30 with respect to effect of subsequent marriage,  
31 birth, or dissolution of marriage; amending s.



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1 732.513, F.S.; revising language with respect  
2 to devises to trustees; amending s. 732.514,  
3 F.S., relating to vesting of devises; amending  
4 s. 732.515, F.S.; revising language with  
5 respect to separate writing identifying devises  
6 of tangible property; amending s. 732.6005,  
7 F.S., relating to rules of construction and  
8 intention; amending s. 732.601, F.S.; revising  
9 language with respect to the Simultaneous Death  
10 Law; amending s. 732.603, F.S.; revising  
11 language with respect to antilapse, deceased  
12 devises, and class gifts; amending s. 732.604,  
13 F.S., relating to the failure of a testamentary  
14 provision; amending s. 732.605, F.S., relating  
15 to change in securities, accessions, and  
16 nonademption; amending s. 732.606, F.S.,  
17 relating to nonademption of specific devises in  
18 certain cases; amending s. 732.701, F.S.;  
19 providing for agreements concerning succession  
20 executed by a nonresident under certain  
21 circumstances; amending s. 732.702, F.S.;  
22 revising language with respect to waiver of  
23 spousal rights; amending s. 732.801, F.S.;  
24 revising language with respect to disclaimer of  
25 interests in property passing by will or  
26 intestate succession or under certain powers of  
27 appointment; amending s. 732.804, F.S.;  
28 providing for provisions relating to  
29 disposition of the body; amending s. 732.901,  
30 F.S., relating to production of wills;  
31 eliminating language with respect to willful

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1 failure to deposit the will; transferring,  
2 amending, and renumbering ss. 732.910, 732.911,  
3 732.912, 732.913, 732.914, 732.915, 732.916,  
4 732.917, 732.918, 732.9185, 732.919, 732.921,  
5 732.9215, 732.92155, 732.9216, and 732.922,  
6 F.S.; correcting cross references; amending ss.  
7 381.004 and 381.0041, F.S.; correcting cross  
8 references; amending s. 733.101, F.S., relating  
9 to the venue of probate proceedings; amending  
10 s. 733.103, F.S., relating to the effect of  
11 probate; amending s. 733.104, F.S.; revising  
12 language with respect to the suspension of the  
13 statute of limitations in favor of the personal  
14 representative; amending s. 733.105, F.S.;  
15 revising language with respect to the  
16 determination of beneficiaries; amending s.  
17 733.106, F.S.; revising language with respect  
18 to costs and attorney fees; amending s.  
19 733.107, F.S., relating to the burden of proof  
20 in contests; amending s. 733.109, F.S.;  
21 revising language with respect to the  
22 revocation of probate; amending s. 733.201,  
23 F.S., relating to proof of wills; amending s.  
24 733.202, F.S.; providing that any interested  
25 person may petition for administration;  
26 repealing s. 733.203, F.S., relating to when  
27 notice is required; amending s. 733.204, F.S.;  
28 revising language with respect to the probate  
29 of a will written in a foreign language;  
30 amending s. 733.205, F.S., relating to the  
31 probate of a notarial will; amending s.

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1           733.206, F.S., relating to the probate of a  
2           resident after foreign probate; amending s.  
3           733.207, F.S.; revising requirements with  
4           respect to the establishment and probate of a  
5           lost or destroyed will; amending s. 733.208,  
6           F.S.; revising language with respect to the  
7           discovery of a later will; amending s. 733.209,  
8           F.S.; providing requirements with respect to  
9           the estates of missing persons; amending s.  
10          733.212, F.S.; revising language with respect  
11          to the notice of administration and filing of  
12          objections; creating s. 733.2121, F.S.;  
13          providing for notice to creditors and the  
14          filing of claims; amending s. 733.2123, F.S.,  
15          relating to adjudication before issuance of  
16          letters; amending s. 733.213, F.S.; providing  
17          that a will may not be construed until after it  
18          has been admitted to probate; amending s.  
19          733.301, F.S.; revising language with respect  
20          to preference in the appointment of the  
21          personal representative; amending s. 733.302,  
22          F.S.; revising language with respect to who may  
23          be appointed personal representative; amending  
24          s. 733.305, F.S., relating to trust companies  
25          and other corporations and associations;  
26          amending s. 733.306, F.S.; revising language  
27          with respect to the effect of the appointment  
28          of a debtor; amending s. 733.307, F.S.,  
29          relating to succession of administration;  
30          amending s. 733.308, F.S., relating to the  
31          administrator ad litem; amending s. 733.309,

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1 F.S., relating to the executor de son tort;  
2 creating s. 733.310, F.S.; providing for when a  
3 personal representative is not qualified;  
4 repealing s. 733.401, F.S., relating to the  
5 issuance of letters; amending s. 733.402, F.S.;  
6 revising language with respect to the bond of a  
7 fiduciary; amending s. 733.403, F.S.; revising  
8 language with respect to the amount of the  
9 bond; amending s. 733.404, F.S., relating to  
10 the liability of the surety; amending s.  
11 733.405, F.S.; revising language with respect  
12 to the release of surety; amending s. 733.406,  
13 F.S.; revising language with respect to bond  
14 premium allowable as an expense of  
15 administration; amending s. 733.501, F.S.;  
16 revising language with respect to curators;  
17 amending s. 733.502, F.S.; revising language  
18 with respect to the resignation of the personal  
19 representative; amending s. 733.503, F.S.;  
20 providing for the appointment of a successor  
21 upon the resignation of the personal  
22 representative; creating s. 733.5035, F.S.;  
23 providing for the surrender of assets after  
24 resignation; creating s. 733.5036, F.S.;  
25 providing for accounting and discharge  
26 following resignation; amending s. 733.504,  
27 F.S.; revising language with respect to the  
28 removal of the personal representative;  
29 amending s. 733.505, F.S.; providing that a  
30 petition for removal shall be filed in the  
31 court having jurisdiction of the

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1 administration; amending s. 733.506, F.S.;

2 revising language with respect to proceedings

3 for removal; creating s. 733.5061, F.S.;

4 providing for the appointment of a successor

5 upon removal of the personal representative;

6 repealing s. 733.507, F.S., relating to

7 administration following resignation or

8 removal; amending s. 733.508, F.S.; providing

9 for accounting and discharge upon removal;

10 amending s. 733.509, F.S.; revising language

11 with respect to surrender of assets upon

12 removal; amending s. 733.601, F.S.; revising

13 language with respect to time of accrual of

14 duties and powers; amending s. 733.602, F.S.,

15 relating to the general duties of a personal

16 representative; amending s. 733.603, F.S.,

17 relating to when a personal representative may

18 proceed without court order; amending s.

19 733.604, F.S.; revising language with respect

20 to inventory; repealing s. 733.605, F.S.,

21 relating to appraisers; creating s. 733.6065,

22 F.S.; providing for the opening of a

23 safe-deposit box; amending s. 733.607, F.S.;

24 revising language with respect to the

25 possession of the estate; amending s. 733.608,

26 F.S.; revising language with respect to the

27 general power of the personal representative;

28 amending s. 733.609, F.S.; revising language

29 with respect to improper exercise of power and

30 the breach of fiduciary duty; amending s.

31 733.610, F.S., relating to the sale,

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1           encumbrance, or transaction involving a  
2           conflict of interest; amending s. 733.611,  
3           F.S.; revising language with respect to persons  
4           dealing with the personal representative;  
5           amending s. 733.612, F.S.; revising language  
6           with respect to transactions authorized for the  
7           personal representatives and exceptions  
8           thereto; amending s. 733.6121, F.S., relating  
9           to powers of the personal representative with  
10          respect to environmental or human health laws  
11          affecting property subject to administration;  
12          amending s. 733.613, F.S.; revising language  
13          with respect to the personal representatives'  
14          right to sell real property; amending s.  
15          733.614, F.S., relating to the powers and  
16          duties of a successor personal representative;  
17          amending s. 733.615, F.S.; revising language  
18          with respect to joint personal representatives;  
19          amending s. 733.616, F.S.; revising language  
20          with respect to the powers of the surviving  
21          personal representatives; amending s. 733.617,  
22          F.S.; revising language with respect to  
23          compensation of the personal representative;  
24          amending s. 733.6171, F.S.; revising language  
25          with respect to compensation of the attorney  
26          for the personal representative; amending s.  
27          733.6175, F.S.; revising language with respect  
28          to proceedings for review of employment of  
29          agents and compensation of personal  
30          representatives and employees of the estate;  
31          amending s. 733.619, F.S., relating to the

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1 individual liability of the personal  
2 representative; amending s. 733.701, F.S.;  
3 revising language with respect to notifying  
4 creditors; correcting cross references;  
5 amending s. 733.702, F.S.; revising language  
6 with respect to limitations on presentation of  
7 claims; amending s. 733.703, F.S.; revising  
8 language with respect to the form and manner of  
9 presenting a claim; amending s. 733.704, F.S.,  
10 relating to amendment of claims; amending s.  
11 733.705, F.S.; revising language with respect  
12 to payment of and objection to claims; amending  
13 s. 733.707, F.S.; revising language with  
14 respect to the order of payment of expenses and  
15 obligations; amending s. 733.708, F.S.;  
16 revising language with respect to compromise;  
17 amending s. 733.710, F.S., relating to claims  
18 against estates; amending s. 733.801, F.S.;  
19 providing that the personal representative  
20 shall pay as an expense of administration  
21 certain costs; amending s. 733.802, F.S.;  
22 revising language with respect to proceedings  
23 for compulsory payment of devises or  
24 distributive interest; amending s. 733.803,  
25 F.S., relating to encumbered property; amending  
26 s. 733.805, F.S.; revising language with  
27 respect to the order in which assets are  
28 appropriated; amending s. 733.806, F.S.,  
29 relating to advancement; amending s. 733.808,  
30 F.S.; revising language with respect to death  
31 benefits and disposition of proceeds; amending

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1 s. 733.809, F.S., relating to right of  
2 retainer; amending s. 733.810, F.S.; revising  
3 language with respect to distribution in kind  
4 and valuation; amending s. 733.811, F.S.;  
5 revising language with respect to the right or  
6 title of distributee; amending s. 733.812,  
7 F.S.; providing for improper distribution or  
8 payment and liability of distributee; amending  
9 s. 733.813, F.S., relating to protection of the  
10 purchaser from the distributee; amending s.  
11 733.814, F.S.; revising language with respect  
12 to partition for the purpose of distribution;  
13 amending s. 733.815, F.S.; providing for  
14 private contracts among certain interested  
15 persons; amending s. 733.816, F.S., relating to  
16 the distribution of unclaimed property held by  
17 the personal representative; amending s.  
18 733.817, F.S.; revising language with respect  
19 to apportionment of estate taxes; amending s.  
20 733.901, F.S.; providing requirements with  
21 respect to final discharge; amending s.  
22 733.903, F.S.; revising language with respect  
23 to subsequent administration; amending s.  
24 734.101, F.S., relating to the foreign personal  
25 representative; amending s. 734.102, F.S.;  
26 revising language with respect to ancillary  
27 administration; amending s. 734.1025, F.S.;  
28 revising language with respect to the  
29 nonresident decedent's testate estate with  
30 property not exceeding a certain value in this  
31 state; providing for the determination of



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1 claims; amending s. 734.104, F.S., relating to  
2 foreign wills; amending s. 734.201, F.S.,  
3 relating to jurisdiction by act of a foreign  
4 personal representative; amending s. 734.202,  
5 F.S., relating to jurisdiction by act of  
6 decedent; repealing s. 735.101, F.S., relating  
7 to family administration and the nature of the  
8 proceedings; repealing s. 735.103, F.S.,  
9 relating to petition for family administration;  
10 repealing s. 735.107, F.S., relating to family  
11 administration distribution; amending s.  
12 735.201, F.S.; increasing a monetary amount  
13 with respect to summary administration;  
14 amending s. 735.203, F.S.; revising language  
15 with respect to the petition for summary  
16 administration; amending s. 735.206, F.S.;  
17 revising language with respect to summary  
18 administration distribution; amending s.  
19 735.2063, F.S.; revising language with respect  
20 to notice to creditors; repealing s. 735.209,  
21 F.S., relating to joinder of heirs, devisees,  
22 or surviving spouse in summary administration;  
23 amending s. 735.301, F.S., relating to  
24 disposition without administration; amending s.  
25 735.302, F.S.; revising language with respect  
26 to income tax refunds in certain circumstances;  
27 creating s. 737.208, F.S.; prohibiting  
28 distribution pending outcome of contest;  
29 providing exceptions; amending s. 737.3054,  
30 F.S.; revising language with respect to  
31 trustee's duty to pay expenses and obligations

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1 of grantor's estate; amending s. 737.306, F.S.;  
 2 revising language with respect to personal  
 3 liability of trustee; creating s. 737.3061,  
 4 F.S.; providing for limitation on actions  
 5 against certain trusts; amending s. 737.308,  
 6 F.S.; revising language with respect to notice  
 7 of trust; amending ss. 215.965, 660.46, and  
 8 737.111, F.S.; correcting cross references;  
 9 directing the Division of Statutory Revision  
 10 and Indexing to change the title of certain  
 11 parts of the Probate Code; providing an  
 12 effective date.

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