

By Senator Burt

16-476-01

See HB 137

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

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

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

1 devises, and class gifts; amending s. 732.604,
2 F.S., relating to the failure of a testamentary
3 provision; amending s. 732.605, F.S., relating
4 to change in securities, accessions, and
5 nonademption; amending s. 732.606, F.S.,
6 relating to nonademption of specific devises in
7 certain cases; amending s. 732.701, F.S.;
8 providing for agreements concerning succession
9 executed by a nonresident under certain
10 circumstances; amending s. 732.702, F.S.;
11 revising provisions with respect to waiver of
12 spousal rights; amending s. 732.801, F.S.;
13 revising provisions with respect to disclaimer
14 of interests in property passing by will or
15 intestate succession or under certain powers of
16 appointment; amending s. 732.804, F.S.;
17 providing for provisions relating to
18 disposition of the body; amending s. 732.901,
19 F.S., relating to production of wills,
20 eliminating provisions with respect to willful
21 failure to deposit the will; transferring and
22 renumbering ss. 732.910, 732.911, 732.912,
23 732.913, 732.914, 732.915, 732.916, 732.917,
24 732.918, 732.9185, 732.919, 732.921, 732.9215,
25 732.92155, 732.9216, and 732.922, F.S., to
26 chapter 765, F.S.; amending s. 733.101, F.S.,
27 relating to the venue of probate proceedings;
28 amending s. 733.103, F.S., relating to the
29 effect of probate; amending s. 733.104, F.S.;
30 revising provisions with respect to the
31 suspension of the statute of limitations in

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

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

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

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

1 733.613, F.S.; revising provisions with respect
2 to the personal representative's right to sell
3 real property; amending s. 733.614, F.S.,
4 relating to the powers and duties of a
5 successor personal representative; amending s.
6 733.615, F.S.; revising provisions with respect
7 to joint personal representatives; amending s.
8 733.616, F.S.; revising provisions with respect
9 to the powers of the surviving personal
10 representatives; amending s. 733.617, F.S.;
11 revising provisions with respect to
12 compensation of the personal representative;
13 amending s. 733.6171, F.S.; revising provisions
14 with respect to compensation of the attorney
15 for the personal representative; amending s.
16 733.6175, F.S.; revising provisions with
17 respect to proceedings for review of employment
18 of agents and compensation of personal
19 representatives and employees of the estate;
20 amending s. 733.619, F.S., relating to the
21 individual liability of the personal
22 representative; amending s. 733.701, F.S.;
23 revising provisions with respect to notifying
24 creditors; conforming cross-references;
25 amending s. 733.702, F.S.; revising provisions
26 with respect to limitations on presentation of
27 claims; amending s. 733.703, F.S.; revising
28 provisions with respect to the form and manner
29 of presenting a claim; amending s. 733.704,
30 F.S., relating to amendment of claims; amending
31 s. 733.705, F.S.; revising provisions with

1 respect to payment of and objection to claims;
2 amending s. 733.707, F.S.; revising provisions
3 with respect to the order of payment of
4 expenses and obligations; amending s. 733.708,
5 F.S.; revising provisions with respect to
6 compromise; amending s. 733.710, F.S., relating
7 to claims against estates; amending s. 733.801,
8 F.S.; providing that the personal
9 representative shall pay as an expense of
10 administration certain costs; amending s.
11 733.802, F.S.; revising provisions with respect
12 to proceedings for compulsory payment of
13 devises or distributive interest; amending s.
14 733.803, F.S., relating to encumbered property;
15 amending s. 733.805, F.S.; revising provisions
16 with respect to the order in which assets are
17 appropriated; amending s. 733.806, F.S.,
18 relating to advancement; amending s. 733.808,
19 F.S.; revising provisions with respect to death
20 benefits and disposition of proceeds; amending
21 s. 733.809, F.S., relating to right of
22 retainer; amending s. 733.810, F.S.; revising
23 provisions with respect to distribution in kind
24 and valuation; amending s. 733.811, F.S.;
25 revising provisions with respect to the right
26 or title of distributee; amending s. 733.812,
27 F.S.; providing for improper distribution or
28 payment and liability of distributee; amending
29 s. 733.813, F.S., relating to protection of the
30 purchaser from the distributee; amending s.
31 733.814, F.S.; revising provisions with respect

1 to partition for the purpose of distribution;
2 amending s. 733.815, F.S.; providing for
3 private contracts among certain interested
4 persons; amending s. 733.816, F.S., relating to
5 the distribution of unclaimed property held by
6 the personal representative; amending s.
7 733.817, F.S.; revising provisions with respect
8 to apportionment of estate taxes; amending s.
9 733.901, F.S.; providing requirements with
10 respect to final discharge; amending s.
11 733.903, F.S.; revising provisions with respect
12 to subsequent administration; amending s.
13 734.101, F.S., relating to the foreign personal
14 representative; amending s. 734.102, F.S.;
15 revising provisions with respect to ancillary
16 administration; amending s. 734.1025, F.S.;
17 revising provisions with respect to the
18 nonresident decedent's testate estate with
19 property not exceeding a certain value in this
20 state; providing for the determination of
21 claims; amending s. 734.104, F.S., relating to
22 foreign wills; amending s. 734.201, F.S.,
23 relating to jurisdiction by act of a foreign
24 personal representative; amending s. 734.202,
25 F.S., relating to jurisdiction by act of
26 decedent; repealing s. 735.101, F.S., relating
27 to family administration and the nature of the
28 proceedings; repealing s. 735.103, F.S.,
29 relating to petition for family administration;
30 repealing s. 735.107, F.S., relating to family
31 administration distribution; amending s.

1 735.201, F.S.; increasing a monetary amount
2 with respect to summary administration;
3 amending s. 735.203, F.S.; revising provisions
4 with respect to the petition for summary
5 administration; amending s. 735.206, F.S.;
6 revising provisions with respect to summary
7 administration distribution; amending s.
8 735.2063, F.S.; revising provisions with
9 respect to notice to creditors; repealing s.
10 735.209, F.S., relating to joinder of heirs,
11 devisees, or surviving spouse in summary
12 administration; amending s. 735.301, F.S.,
13 relating to disposition without administration;
14 amending s. 735.302, F.S.; revising provisions
15 with respect to income tax refunds in certain
16 circumstances; amending s. 737.3054, F.S.;
17 revising provisions with respect to trustee's
18 duty to pay expenses and obligations of
19 grantor's estate; amending s. 737.306, F.S.;
20 revising provisions with respect to personal
21 liability of trustee; creating s. 737.3061,
22 F.S.; providing for limitation on actions
23 against certain trusts; amending s. 737.308,
24 F.S.; revising provisions with respect to
25 notice of trust; amending ss. 215.965, 660.46,
26 and 737.111, F.S.; conforming cross-references;
27 directing the Division of Statutory Revision
28 and Indexing to change the title of certain
29 parts of the Probate Code; providing an
30 effective date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2

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

5 63.172 Effect of judgment of adoption.--

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

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

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

30 Section 2. Section 409.9101, Florida Statutes, is
31 amended to read:

1 409.9101 Recovery for payments made on behalf of
2 Medicaid-eligible persons.--

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

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

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

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

1 the probate proceeding, the agency shall be an interested
2 person as defined in s. 731.201 to the same extent as other
3 estate claimants ~~There is no claim under this section against~~
4 ~~estates of recipients who had not yet reached 55 years of age.~~

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

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

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

19 ~~(6)(8) The debt claim created under this section shall~~
20 ~~not be enforced if the recipient is survived by:~~

21 (a) A spouse;

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

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

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

31

1 ~~and is determined to be exempt from the claims of creditors of~~
2 ~~the deceased Medicaid recipient.~~

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

13 (a) The beneficiary heir:

14 1. Currently resides in the residence of the
15 decedent,†

16 2. Resided there at the time of the death of the
17 decedent,†

18 3. Has made the residence his or her primary residence
19 for the 12 months immediately preceding the death of the
20 decedent,†and

21 4. Owns no other residence;

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

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

31

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

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

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

23 (11)~~(13)~~ The agency is authorized to adopt rules to
24 implement the provisions of this section.

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

27 655.936 Delivery of safe-deposit box contents or
28 property held in safekeeping to personal representative.--

29 (4) The initial opening of the decedent's safe-deposit
30 box shall be conducted in the presence of any two of the
31 following persons: an employee of the institution where the

1 box is located, the personal representative, or the personal
2 representative's attorney of record. Each person who is
3 present must verify the contents of the box by signing a copy
4 of the inventory under penalties of perjury. The personal
5 representative shall file the safe-deposit box inventory,
6 together with a copy of the box entry record from a date which
7 is 6 months prior to the date of death to the date of
8 inventory, with the court within 10 days after the box is
9 opened. Unless otherwise ordered by the court, this inventory
10 and the attached box entry record is subject to inspection
11 only by persons entitled to inspect an inventory under s.
12 733.604(1). The personal representative may remove the
13 contents of the box.~~Notwithstanding other provisions of this~~
14 ~~section, 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 Section 4. Section 731.005, Florida Statutes, is
24 amended to read:

25 731.005 Short title.--Chapters 731-735 shall be known
26 and may be cited as the Florida Probate Code and ~~herein~~
27 referred to as "the code" ~~in this act.~~

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

30 731.011 Determination of substantive rights;
31 procedures.--The code became ~~Florida Probate Code shall become~~

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

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

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

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

22 731.106 Assets of nondomiciliaries.--

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

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

23 731.110 Caveat; proceedings.--

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

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

12 Section 10. Section 731.111, Florida Statutes, is
13 repealed.

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

16 731.201 General definitions.--Subject to additional
17 definitions in subsequent chapters that are applicable to
18 specific chapters or parts, and unless the context otherwise
19 requires, in this code, in s. 409.9101, and in chapters 737,
20 738, and 744:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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, the
18 exemption for which inures at the death of the owner 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

1 means a devise of all assets remaining after satisfying the
2 obligations of the estate.

3 (32)~~(31)~~ "Security" means a security as defined in s.
4 517.021.

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

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

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

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

1 Section 12. Section 731.301, Florida Statutes, is
2 amended to read:

3 731.301 ~~Notice; method and time; proof.--~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

1 Section 13. Section 731.303, Florida Statutes, is
2 amended to read:

3 731.303 Representation.--In proceedings involving
4 estates of decedents or trusts, the following apply:

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

9 (1)~~(2)~~ Persons are bound by orders binding others in
10 the following cases:

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

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

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

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

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

31

1 (c) An unborn or unascertained person, or a minor or
2 any other person under a legal disability, who is not
3 otherwise represented is bound by an order to the extent that
4 person's ~~his or her~~ interest is represented by another party
5 having the same or greater quality of interest in the
6 proceeding.

7 ~~(2)(3)~~ Orders binding a guardian of the person shall
8 not bind the ward.

9 ~~(3)(4)~~ Notice is required as follows:

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

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

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

31

1 (5)(6) Agreements, waivers, consents, approvals,
2 accounts, or other statements that fully disclose the matters
3 that ~~which~~ are the subject of the ~~such~~ accounts or statements
4 and that bind the sole holder or all coholders of a general,
5 special, or limited power of appointment, including a power of
6 amendment or revocation to the extent that the power has not
7 become unexercisable in fact, bind all persons to the extent
8 that their interests, as persons who may take by virtue of the
9 exercise or nonexercise of the power, are subject to the
10 power.

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

13 732.101 Intestate estate.--

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

16 Section 15. Section 732.102, Florida Statutes, is
17 amended to read:

18 732.102 Spouse's share of intestate estate ~~Share of~~
19 ~~spouse~~.--

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

21 (1)(a) If there is no surviving lineal descendant of
22 the decedent, the entire intestate estate.

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

31

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

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

6 Section 16. Paragraph (c) of subsection (4) and
7 subsection (5) of section 732.103, Florida Statutes, are
8 amended to read:

9 732.103 Share of other heirs.--The part of the
10 intestate estate not passing to the surviving spouse under s.
11 732.102, or the entire intestate estate if there is no
12 surviving spouse, descends as follows:

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

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

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

26 Section 17. Section 732.107, Florida Statutes, is
27 amended to read:

28 732.107 Escheat.--

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

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

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

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

22 ~~(3)(4) At any time within 10 years after the payment~~
23 ~~to the Treasurer ~~granting of letters~~, a person claiming to be~~
24 ~~entitled to the proceeds ~~estate of the decedent~~ may ~~petition~~~~
25 ~~to reopen the administration to and assert entitlement ~~his or~~~~
26 ~~her rights to the proceeds ~~escheated property~~. ~~If the claimant~~~~
27 ~~is entitled to any of the estate of the decedent, the court~~
28 ~~shall fix the amount to which he or she is entitled, and it~~
29 ~~shall be repaid to him or her with interest at the legal rate~~
30 ~~by the officials charged with the disbursement of state school~~
31 ~~funds. Any entitlement shall include interest at the legal~~

1 rate. If no claim is timely asserted ~~within the time fixed,~~
2 ~~the title of the state's rights to state to the property and~~
3 the proceeds shall become absolute.

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

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

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

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

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

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

30 Section 18. Section 732.1101, Florida Statutes, is
31 amended to read:

1 732.1101 Aliens.--Aliens shall have the same rights of
2 inheritance as citizens ~~No person is disqualified to take as~~
3 ~~an heir because he or she, or a person through whom he or she~~
4 ~~claims, is, or has been, an alien.~~

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

7 732.2025 Definitions.--As used in ss.
8 732.2025-732.2155, the term:

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

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

21 (b) During the spouse's life, no person other than the
22 spouse has the power to distribute income or principal to
23 anyone other than the spouse.

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

29 Section 20. Paragraph (a) of subsection (3) of section
30 732.2085, Florida Statutes, is amended to read:

31

1 732.2085 Liability of direct recipients and
2 beneficiaries.--

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

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

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

11 732.2125 Right of election; by whom exercisable.--The
12 right of election may be exercised:

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

20 Section 22. Section 732.2135, Florida Statutes, is
21 amended to read:

22 732.2135 Time of election; extensions; withdrawal.--

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

29 (2) Within the period provided in subsection (1), the
30 surviving spouse or an attorney in fact or guardian of the
31 property of the surviving spouse may petition the court for an

1 extension of time for making an election. ~~After notice and~~
2 ~~hearing, the court~~ For good cause shown the court may extend
3 the time for election. If the court grants the petition for an
4 extension, the election must be filed within the time allowed
5 by the extension.

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

13 (4) A petition for an extension of the time for making
14 the election or for approval to make the election shall toll
15 the time for making the election.

16 Section 23. Subsections (1) and (4) of section
17 732.2145, Florida Statutes, are amended to read:

18 732.2145 Order of contribution; personal
19 representative's duty to collect contribution.--

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

26 (4) Nothing in this section limits the independent
27 right of the surviving spouse to collect the elective share as
28 provided in the order of contribution, and that right is
29 hereby conferred. If the surviving spouse brings an action to
30 enforce the ~~an order of contribution~~, the judgment shall
31

1 include the surviving spouse's costs and reasonable attorney's
2 fees.

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

5 732.2155 Effective date; effect of prior waivers;
6 transition rules.--

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

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

16 732.218 Rebuttable presumptions.--In determining
17 whether ss. 732.216-732.228 apply to specific property, the
18 following rebuttable presumptions apply:

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

27 Section 26. Section 732.219, Florida Statutes, is
28 amended to read:

29 732.219 Disposition upon death.--Upon the death of a
30 married person, one-half of the property to which ss.
31 732.216-732.228 apply is the property of the surviving spouse

1 and is not subject to testamentary disposition by the decedent
2 or distribution under the laws of succession of this state.
3 One-half of that property is the property of the decedent and
4 is subject to testamentary disposition or distribution under
5 the laws of succession of this state. The decedent's one-half
6 of that ~~the~~ property is not in the elected estate ~~subject to~~
7 ~~the surviving spouse's right to elect against the will.~~

8 Section 27. Section 732.221, Florida Statutes, is
9 amended to read:

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

24 Section 28. Subsections (1) and (2) of section
25 732.222, Florida Statutes, are amended to read:

26 732.222 Purchaser for value or lender.--

27 (1) If a surviving spouse has apparent title to
28 property to which ss. 732.216-732.228 apply, a purchaser for
29 value or a lender taking a security interest in the property
30 takes the ~~his or her~~ interest in the property free of any
31

1 rights of the personal representative or a beneficiary ~~an heir~~
2 ~~or devisee~~ of the decedent.

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

9 Section 29. Section 732.223, Florida Statutes, is
10 amended to read:

11 732.223 Perfection of title of surviving spouse.--If
12 the title to any property to which ss. 732.216-732.228 apply
13 was held by the decedent at the time of the decedent's ~~his or~~
14 ~~her~~ death, title of the surviving spouse may be perfected by
15 an order of the probate court or by execution of an instrument
16 by the personal representative or the beneficiaries ~~heirs or~~
17 ~~devisees~~ of the decedent with the approval of the probate
18 court. The probate court in which the decedent's estate is
19 being administered has no duty to discover whether property
20 held by the decedent is property to which ss. 732.216-732.228
21 apply. The personal representative has no duty to discover
22 whether property held by the decedent is property to which ss.
23 732.216-732.228 apply unless a written demand is made by the
24 surviving spouse or the spouse's successor in interest within
25 3 6 months after service of a copy of ~~the first publication of~~
26 the notice of administration on the surviving spouse or the
27 spouse's successor in interest.

28 Section 30. Section 732.302, Florida Statutes, is
29 amended to read:

30 732.302 Pretermitted children.--When a testator omits
31 to provide by ~~in his or her~~ will for any of his or her

1 children born or adopted after making the will and the child
2 has not received a part of the testator's property equivalent
3 to a child's part by way of advancement, the child shall
4 receive a share of the estate equal in value to that which the
5 child ~~he or she~~ would have received if the testator had died
6 intestate, unless:

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

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

14
15 The share of the estate that is assigned to the pretermitted
16 child shall be obtained in accordance with s. 733.805.

17 Section 31. Section 732.401, Florida Statutes, is
18 amended to read:

19 732.401 Descent of homestead.--

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

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

31

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

3 732.4015 Devise of homestead.--

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

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

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

16 Section 33. Subsections (4) and (6) of section
17 732.402, Florida Statutes, are amended, and subsection (7) is
18 added to that section to read:

19 732.402 Exempt property.--

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

26 (6) Persons entitled to exempt property shall be
27 deemed to have waived their rights under this section unless a
28 petition for determination of exempt property is filed by or
29 on behalf of the persons entitled to the exempt property
30 within 4 months after the date of service ~~the first~~
31 ~~publication~~ of the notice of administration or within 40 days

1 from the date of termination of any proceeding involving the
2 construction, admission to probate, or validity of the will or
3 involving any other matter affecting any part of the estate
4 subject to this section.

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

9 Section 34. Section 732.403, Florida Statutes, is
10 amended to read:

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

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

10 Section 35. Section 732.501, Florida Statutes, is
11 amended to read:

12 732.501 Who may make a will.--Any person who is of
13 sound mind and who is either 18 or more years of age or an
14 emancipated minor ~~18 or more years of age who is of sound mind~~
15 may make a will.

16 Section 36. Paragraph (a) of subsection (1) and
17 subsection (2) of section 732.502, Florida Statutes, are
18 amended to read:

19 732.502 Execution of wills.--Every will must be in
20 writing and executed as follows:

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

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

26 (2) Any will, other than a holographic or nuncupative
27 will, executed by a nonresident of Florida, either before or
28 after this law takes effect, is valid as a will in this state
29 if valid under the laws of the state or country where the will
30 was executed ~~testator was at the time of execution~~. A will in
31 the testator's handwriting that has been executed in

1 accordance with subsection (1) shall not be considered a
2 holographic will.
3 Section 37. Section 732.503, Florida Statutes, is
4 amended to read:
5 732.503 Self-proof of will.--
6 (1) A will or codicil executed in conformity with s.
7 732.502~~(1) and (2)~~ may be made self-proved at the time of its
8 execution or at any subsequent date by the acknowledgment of
9 it by the testator and the affidavits of the witnesses, ~~each~~
10 made before an officer authorized to administer oaths and
11 evidenced by the officer's certificate attached to or
12 following the will, in substantially the following form:

13

14 STATE OF FLORIDA

15 COUNTY OF

16 I, _____, declare to the officer taking my
17 acknowledgment of this instrument, and to the subscribing
18 witnesses, that I signed this instrument as my will.

19

20

21

22

Testator

23

24 We, _____ and _____, have been sworn by the
25 officer signing below, and declare to that officer on our
26 oaths that the testator declared the instrument to be the
27 testator's will and signed it in our presence and that we each
28 signed the instrument as a witness in the presence of the
29 testator and of each other.

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Witness

Witness

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

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

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

~~STATE OF~~
~~COUNTY OF~~

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

6 Section 39. Section 732.507, Florida Statutes, is
7 amended to read:

8 732.507 Effect of subsequent marriage, birth, or
9 dissolution of marriage.--

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

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

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

27 732.513 Devises to trustee.--

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

30 (d) Because the only res of the trust is the possible
31 expectancy of receiving, as a named beneficiary, a devise

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

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

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

11 Section 41. Section 732.514, Florida Statutes, is
12 amended to read:

13 732.514 Vesting of devises.--The death of the testator
14 is the event that vests the right to devises unless the
15 testator in the ~~his or her~~ will has provided that some other
16 event must happen before a devise vests ~~shall vest~~.

17 Section 42. Section 732.515, Florida Statutes, is
18 amended to read:

19 732.515 Separate writing identifying devises of
20 tangible property.--A ~~will may refer to a~~ written statement or
21 list referred to in the decedent's will shall ~~to~~ dispose of
22 items of tangible personal property, other than property used
23 in trade or business, not otherwise specifically disposed of
24 by the will, ~~other than money and property used in trade or~~
25 ~~business~~. To be admissible under this section as evidence of
26 the intended disposition, the writing must be signed by the
27 testator and must describe the items and the devisees with
28 reasonable certainty. The writing ~~may be referred to as one~~
29 ~~in existence at the time of the testator's death.~~ It may be
30 prepared before or after the execution of the will. It may be
31 altered by the testator after its preparation. It may be a

1 writing that has no significance apart from its effect upon
2 the dispositions made by the will.

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

5 732.6005 Rules of construction and intention.--

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

11 Section 44. Section 732.601, Florida Statutes, is
12 amended to read:

13 732.601 Simultaneous Death Law.--Unless a contrary
14 intention appears in the governing instrument:

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

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

29 (3) When there is insufficient evidence that two joint
30 tenants or tenants by the entirety died otherwise than
31 simultaneously, the property so held shall be distributed

1 one-half as if one had survived and one-half as if the other
2 had survived. If there are more than two joint tenants and all
3 of them so died, the property thus distributed shall be in the
4 proportion that one bears to the ~~whole~~ number of joint
5 tenants.

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

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

15 Section 45. Section 732.603, Florida Statutes, is
16 amended to read:

17 732.603 Antilapse; deceased devisee; class
18 gifts.--Unless a contrary intention appears in the will:

19 (1) If a devisee or a beneficiary of a trust created
20 by a will who is a grandparent, or a lineal descendant of a
21 grandparent, of the testator:

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

24 (b) Fails to survive the testator, or

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

27
28 then the descendants of the devisee or beneficiary take per
29 stirpes in place of the deceased devisee or beneficiary. A
30 person who would have been a devisee under a class gift if
31 that person ~~he or she~~ had survived the testator shall be a

1 devisee for purposes of this section whether that person died
2 ~~his or her death occurred~~ before or after the execution of the
3 will.

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

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

9 (b) Fails to survive the testator, or

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

12

13 then the testamentary disposition to the devisee or
14 beneficiary shall lapse unless an intention to substitute
15 another ~~in his or her place~~ appears in the will.

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

18 732.604 Failure of testamentary provision.--

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

25 Section 47. Section 732.605, Florida Statutes, is
26 amended to read:

27 732.605 Change in securities; accessions;
28 nonademption.--

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

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

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

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

10 (d) Securities of the same entity acquired as a result
11 of a plan of reinvestment.

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

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

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

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

1 survives the adjudication by 1 year. The right of the specific
2 devisee under this subsection is reduced by any right
3 described in he or she has under subsection (2).

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

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

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

12 732.701 Agreements concerning succession.--

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

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

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

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

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

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

1 shall be required for an agreement, contract, or waiver
2 executed before marriage.

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

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

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

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

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

15 1. By intestate succession or devise.

16 2. Under descent of homestead, exempt property, or
17 family allowance or under s. 222.13.

18 3. Through exercise or nonexercise of a power of
19 appointment exercisable by will.

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

22 5. As beneficiary of a testamentary trust.

23 6. As a beneficiary of a testamentary gift to any
24 nontestamentary trust.

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

26 8. By succession in any manner described in this
27 subsection to a disclaimed interest.

28 9. In any manner not specifically enumerated herein
29 under a testamentary instrument.

30 (b) Disclaimer may be made for a minor, incompetent,
31 incapacitated person, or deceased beneficiary by the guardian

1 or personal representative if the court having jurisdiction of
2 the estate of the minor, incompetent, incapacitated person, or
3 deceased beneficiary upon petition finds that the disclaimer:

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

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

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

17 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

18 (a) Unless the decedent or a donee of a power of
19 appointment has otherwise provided by will or other
20 appropriate instrument with reference to the possibility of a
21 disclaimer by the beneficiary, the interest disclaimed shall
22 descend, be distributed, or otherwise be disposed of in the
23 same manner as if the disclaimant had died immediately
24 preceding the death or other event that caused ~~him or her to~~
25 ~~become finally ascertained as a beneficiary~~ and the
26 disclaimant's interest to become indefeasibly fixed both in
27 quality and quantity. The disclaimer shall relate to that
28 date for all purposes, whether recorded before or after the
29 death or other event. An interest in property disclaimed
30 shall never vest in the disclaimant. If the provisions of s.
31 732.603 would have been applicable had the disclaimant in fact

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

30 732.901 Production of wills.--

31

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

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

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

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

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

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

30
31

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

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

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

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

9 733.101 Venue of probate proceedings.--

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

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

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

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

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

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

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

31 733.103 Effect of probate.--

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

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

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

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

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

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

27 733.105 Determination of beneficiaries.--

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

1 (a) Who is entitled to receive any part of the
2 property it or part of it, or

3 (b) The shares and amounts that any person is entitled
4 to receive,

5
6 any interested person the personal representative may petition
7 the court to determine beneficiaries or their shares file a
8 petition setting forth the names, residences, and post office
9 addresses of all persons in interest, except creditors of the
10 decedent, so far as known or ascertainable by diligent search
11 and inquiry, and the nature of their respective interests,
12 designating those who are believed by the personal
13 representative to be minors or incompetents and stating
14 whether those so designated are under legal guardianship in
15 this state. If the personal representative believes that
16 there are, or may be, persons whose names are not known to him
17 or her who have claims against, or interest in, the estate as
18 heirs or devisees, the petition shall so state.

19 (2) ~~After formal notice and hearing, the court shall~~
20 ~~enter an order determining the heirs or devisees or the shares~~
21 ~~and amounts they are entitled to receive, or both. Any~~
22 ~~personal representative who makes distribution or takes any~~
23 ~~other action pursuant to an the order determining~~
24 ~~beneficiaries shall be fully protected.~~

25 (3) ~~When it is necessary to determine who are or were~~
26 ~~the heirs or devisees, the court may make a determination, on~~
27 ~~the petition of any interested person, in like proceedings and~~
28 ~~after formal notice, irrespective of whether the estate of the~~
29 ~~deceased person is administered or, if administered, whether~~
30 ~~the administration of the estate has been closed or the~~
31 ~~personal representative discharged. A separate civil action~~

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

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

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

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

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

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

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

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

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

3 733.109 Revocation of probate.--

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

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

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

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

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

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

31 733.201 Proof of wills.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

1 733.204 Probate of a will written in a foreign
2 language.--

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

14 Section 81. Section 733.205, Florida Statutes, is
15 amended to read:

16 733.205 Probate of notarial will.--

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

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

30 (3) Any interested person ~~notified~~ may oppose the
31 probate of such a notarial will or may petition for revocation

1 of probate of such a notarial will, as in the ~~case of~~ original
2 probate of a will in this state.

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

5 733.206 Probate of will of resident after foreign
6 probate.--

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

11 Section 83. Section 733.207, Florida Statutes, is
12 amended to read:

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

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

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

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

1 witnesses, or, if a correct copy is provided, it shall be
2 proved by one disinterested witness.

3 Section 84. Section 733.208, Florida Statutes, is
4 amended to read:

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

15 Section 85. Section 733.209, Florida Statutes, is
16 amended to read:

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

26 Section 86. Section 733.212, Florida Statutes, is
27 amended to read:

28 733.212 Notice of administration; filing of objections
29 and claims.--

30 (1) ~~The personal representative shall promptly publish~~
31 ~~a notice of administration. The notice shall contain the name~~

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

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

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

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

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

25 (a) The decedent's surviving spouse;

26 (b) Beneficiaries; ~~and~~

27 (c) The trustee of any trust described in s.
28 733.707(3); and, of which the decedent was grantor

29 (d) Persons who may be entitled to exempt property,
30
31

1 in the manner provided for service of formal notice, unless
2 served under s. 733.2123. The personal representative may
3 similarly serve a copy of the notice on any devisees under a
4 known prior will or heirs or others who claim or may claim an
5 interest in the estate.

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

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

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

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

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

28 ~~(5) Objections under paragraph (1)(b), by persons on~~
29 ~~whom notice was served, that are not filed within the later of~~
30 ~~3 months after the date of first publication of the notice or~~
31

1 ~~30 days after the date of service of a copy of the notice on~~
2 ~~the objecting person are forever barred.~~

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

8 Section 87. Section 733.2121, Florida Statutes, is
9 created to read:

10 733.2121 Notice to creditors; filing of claims.--

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

22 (2) Publication shall be once a week for 2 consecutive
23 weeks, in a newspaper published in the county where the estate
24 is administered or, if there is no newspaper published in the
25 county, in a newspaper of general circulation in that county.

26 (3)(a) The personal representative shall promptly make
27 a diligent search to determine the names and addresses of
28 creditors of the decedent who are reasonably ascertainable,
29 even if the claims are unmaturing, contingent, or unliquidated,
30 and shall promptly serve a copy of the notice on those
31 creditors. Impracticable and extended searches are not

1 required. Service is not required on any creditor who has
2 filed a claim as provided in this part, whose claim has been
3 paid in full, or whose claim is listed in a personal
4 representative's timely filed proof of claim.

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

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

15 (d) If a decedent at the time of death was 55 years of
16 age or older, and was not survived by a spouse, a child or
17 children under 21 years of age at the time of death, or a
18 child or children who are blind or permanently and totally
19 disabled pursuant to the eligibility requirements of Title XIX
20 (Medicaid) of the Social Security Act, the personal
21 representative shall promptly serve a copy of the notice to
22 creditors on the Agency for Health Care Administration within
23 3 months after the first publication of the notice to
24 creditors, unless the agency has already filed a statement of
25 claim in the estate proceedings.

26 (e) If the Department of Revenue has not previously
27 been served with a copy of the notice to creditors, then
28 service of the inventory on the Department of Revenue shall be
29 the equivalent of service of a copy of the notice to
30 creditors.

31

1 (4) Claims are barred as provided in ss. 733.702 and
2 733.710.

3 Section 88. Section 733.2123, Florida Statutes, is
4 amended to read:

5 733.2123 Adjudication before issuance of letters.--A
6 petitioner may serve formal notice of the ~~his or her~~ petition
7 for administration on interested persons. A copy of the will
8 offered for ~~proposed to be admitted to~~ probate shall be
9 attached to the notice. No person who is served with formal
10 notice of the petition for administration prior to the
11 issuance of letters or who has waived notice may challenge the
12 validity of the will, testacy of the decedent, qualifications
13 of the personal representative, venue, or jurisdiction of the
14 court, except in ~~connection with~~ the proceedings before
15 issuance of letters.

16 Section 89. Section 733.213, Florida Statutes, is
17 amended to read:

18 733.213 Probate as prerequisite to judicial petition
19 ~~for~~ construction of will.--A will may not be construed until
20 it has been admitted to probate ~~No pleading seeking~~
21 ~~construction of a will may be maintained until the will has~~
22 ~~first been probated.~~

23 Section 90. Section 733.301, Florida Statutes, is
24 amended to read:

25 733.301 Preference in appointment of personal
26 representative.--

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

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

30
31

1 1.(a) The personal representative, or his or her
2 successor, nominated by the will or pursuant to a power
3 conferred in the will.

4 2.(b) The person selected by a majority in interest of
5 the persons entitled to the estate.

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

9 (b)(2) In intestate estates:

10 1.(a) The surviving spouse.

11 2.(b) The person selected by a majority in interest of
12 the heirs.

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

16 (2)(3) A guardian of the property of a ward who if
17 competent would be entitled to appointment as, or to select,
18 the ~~a~~ personal representative may exercise the right to select
19 the personal representative.

20 (3)(4) In either a testate or an intestate estate, if
21 no application is made by any of the persons described ~~named~~
22 in subsection (1) ~~or subsection (2)~~, the court shall appoint a
23 capable person; but no person may be appointed under this
24 subsection:

25 (a) Who works for, or holds public office under, the
26 court.

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

29 (4)(5) After letters have been granted in either a
30 testate or an intestate estate, if a person who was entitled
31 to, and has not waived, preference over the person appointed

1 at the time of the ~~his or her~~ appointment and on whom formal
2 notice was not served seeks the appointment, the letters
3 granted may be revoked and the person entitled to preference
4 may have letters granted ~~to him or her~~ after formal notice and
5 hearing.

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

10 Section 91. Section 733.302, Florida Statutes, is
11 amended to read:

12 733.302 Who may be appointed personal
13 representative.--Subject to the limitations in this part, any
14 person who is sui juris and who is a resident of Florida at
15 the time of the death of the person whose estate is to be
16 administered ~~he or she seeks to administer~~ is qualified to act
17 as personal representative in Florida. ~~A person who has been~~
18 ~~convicted of a felony or who, from sickness, intemperance, or~~
19 ~~want of understanding, is incompetent to discharge the duties~~
20 ~~of a personal representative is not qualified.~~

21 Section 92. Subsections (1) and (2) of section
22 733.305, Florida Statutes, are amended to read:

23 733.305 Trust companies and other corporations and
24 associations.--

25 (1) All trust companies incorporated under the laws of
26 Florida ~~the state~~, all state banking corporations and state
27 savings associations authorized and qualified to exercise
28 fiduciary powers in Florida, and all national banking
29 associations and federal savings and loan associations
30 authorized and qualified to exercise fiduciary powers in
31

1 Florida shall be entitled to act as personal representatives
2 and curators of estates.

3 (2) When a qualified corporation has been named as a
4 personal representative in a will and subsequently ~~thereafter~~
5 transfers its business and assets to, consolidates or merges
6 with, or is in any manner provided by law succeeded by
7 another qualified corporation, on the death of the testator,
8 the successor corporation may qualify as personal
9 representative, ~~and the court may issue letters to the~~
10 ~~successor corporation~~ unless the will provides otherwise.

11 Section 93. Section 733.306, Florida Statutes, is
12 amended to read:

13 733.306 Effect of appointment of debtor.--The
14 appointment of a debtor as personal representative shall not
15 extinguish the debt due to the decedent. ~~This section shall~~
16 ~~not prevent a testator from releasing a debtor by will.~~

17 Section 94. Section 733.307, Florida Statutes, is
18 amended to read:

19 733.307 Succession of administration.--~~The~~ ~~No~~ personal
20 representative of the estate of a deceased personal
21 representative is not ~~as such shall be~~ authorized to
22 administer the estate of the first decedent. On the death of
23 a ~~the~~ sole or surviving personal representative, the court
24 shall appoint a successor personal representative to complete
25 the administration of the estate.

26 Section 95. Section 733.308, Florida Statutes, is
27 amended to read:

28 733.308 Administrator ad litem.--~~When it is necessary~~
29 ~~that~~ an estate must be represented and the ~~there is no~~
30 personal representative is unable to do so ~~of the estate~~, the
31 court shall appoint an administrator ad litem without bond to

1 represent the estate in that ~~for that particular~~ proceeding.
2 The fact that the personal representative is seeking
3 reimbursement for claims against the decedent ~~paid by the~~
4 ~~personal representative~~ does not require appointment of an
5 administrator ad litem.

6 Section 96. Section 733.309, Florida Statutes, is
7 amended to read:

8 733.309 Executor de son tort.--No person shall be
9 liable to a creditor of a decedent as executor de son tort,
10 but any person taking, converting, or intermeddling with the
11 property of a decedent shall be liable to the personal
12 representative or curator, when appointed, for the value of
13 all the property so taken or converted and for all damages to
14 the estate caused by the ~~his or her~~ wrongful action. This
15 section shall not be construed to prevent a creditor of a
16 decedent from suing anyone in possession of property
17 fraudulently conveyed by the decedent to set aside the
18 fraudulent conveyance.

19 Section 97. Section 733.310, Florida Statutes, is
20 created to read:

21 733.310 Personal representative not qualified.--At any
22 time when a personal representative knows or should have known
23 that he or she would not be entitled to appointment if
24 application for appointment were then made, the personal
25 representative shall promptly file and serve a notice setting
26 forth the reasons. A personal representative who fails to
27 comply with this section shall be personally liable for costs,
28 including attorney's fees, incurred in any removal proceeding,
29 if the personal representative is removed. This liability
30 shall be cumulative to any other provided by law.

31

1 Section 98. Section 733.401, Florida Statutes, is
2 repealed.

3 Section 99. Section 733.402, Florida Statutes, is
4 amended to read:

5 733.402 Bond of fiduciary ~~personal representative~~;
6 when required; form.--

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

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

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

25 (4) On petition by any interested person or on the
26 court's own motion, the court may waive the requirement of
27 filing a bond, require a bond, increase or decrease the bond,
28 or require additional surety.

29 Section 100. Section 733.403, Florida Statutes, is
30 amended to read:

31 733.403 Amount of bond.--

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

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

12 Section 101. Section 733.404, Florida Statutes, is
13 amended to read:

14 733.404 Liability of surety.--No surety for any
15 personal representative or curator shall be charged beyond the
16 value of the assets of an estate because of any omission or
17 mistake in pleading or of false pleading of the personal
18 representative or curator.

19 Section 102. Section 733.405, Florida Statutes, is
20 amended to read:

21 733.405 Release of surety.--

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

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

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

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

17 Section 103. Section 733.406, Florida Statutes, is
18 amended to read:

19 733.406 Bond premium allowable as expense of
20 administration or costs.--A personal representative ~~Any~~
21 ~~receiver, assignee, trustee, committee, guardian, executor or~~
22 ~~administrator, or other fiduciary required by law to give bond~~
23 shall pay the reasonable premium as an expense of
24 administration as such, may include as part of his or her
25 ~~lawful expense such reasonable sum paid such an insurer for~~
26 ~~such suretyship not exceeding 1 percent per annum on the~~
27 ~~amount of the bond, as the head of department, board, court,~~
28 ~~judge or officer by whom, or the court or body in which, he or~~
29 ~~she was appointed allows; and in all actions or proceedings~~
30 ~~the party entitled to recover costs may include therein such~~
31

1 ~~reasonable sum as may have been paid such an insurer executing~~
2 ~~or guaranteeing any bond or undertaking therein.~~

3 Section 104. Section 733.501, Florida Statutes, is
4 amended to read:

5 733.501 Curators.--

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

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

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

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1 ~~(2)(4)~~ Bond shall be required of the curator as the
2 court deems necessary ~~to secure the property~~. No bond shall
3 be required of banks and trust companies as curators.

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

11 ~~(3)(6)~~ Curators shall be allowed reasonable
12 compensation for their services and the court may consider the
13 provisions of s. 733.617.

14 ~~(4)~~ Curators shall be subject to removal and
15 surchage.

16 Section 105. Section 733.502, Florida Statutes, is
17 amended to read:

18 733.502 Resignation of personal representative.--A
19 personal representative may resign ~~and be relieved of his or~~
20 ~~her office. Notice of the petition shall be given to all~~
21 ~~interested persons. Before relieving the personal~~
22 ~~representative from his or her duties and obligations, the~~
23 ~~court shall require the personal representative to file a true~~
24 ~~and correct account of his or her administration and deliver~~
25 ~~to his or her successor or to his or her joint personal~~
26 ~~representative all of the property of the decedent and all~~
27 ~~records concerning the estate. After notice to all interested~~
28 persons, the court may accept the resignation and then revoke
29 the letters of the resigning personal representative if the
30 interests of the estate are not jeopardized by the
31 resignation.~~The acceptance of the resignation, after~~

1 ~~compliance with this section,~~ shall not exonerate the any
2 personal representative or the his or her surety from
3 liability ~~previously incurred.~~

4 Section 106. Section 733.503, Florida Statutes, is
5 amended to read:

6 733.503 Appointment of successor upon
7 resignation.--When the personal representative's resignation
8 is accepted, the court shall appoint a personal representative
9 or shall appoint a curator to serve until a successor personal
10 representative is appointed ~~if there is no joint personal~~
11 ~~representative, a successor must be appointed and qualified~~
12 ~~before a personal representative may be relieved of his or her~~
13 ~~duties and obligations as provided in s. 733.502.~~

14 Section 107. Section 733.5035, Florida Statutes, is
15 created to read:

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

26 Section 108. Section 733.5036, Florida Statutes, is
27 created to read:

28 733.5036 Accounting and discharge following
29 resignation.--
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1 (1) A resigning personal representative shall file and
2 serve a final accounting of the personal representative's
3 administration.

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

12 Section 109. Section 733.504, Florida Statutes, is
13 amended to read:

14 733.504 ~~Causes of~~ Removal of personal representative;
15 causes for removal.--A personal representative may be removed
16 and the ~~his or her~~ letters revoked for any of the following
17 causes, and the removal shall be in addition to any penalties
18 prescribed by law:

19 (1) Adjudication of incompetency.

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

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

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

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

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

29 (7) Conviction of a felony.

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

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

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

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

15 (12) The personal representative would not now be
16 entitled to appointment.

17 Section 110. Section 733.505, Florida Statutes, is
18 amended to read:

19 733.505 Jurisdiction in removal proceedings.--A
20 petition for removal shall be filed in the court having
21 jurisdiction of the administration ~~issuing the letters.~~

22 Section 111. Section 733.506, Florida Statutes, is
23 amended to read:

24 733.506 Proceedings for removal.--Proceedings for
25 removal of a personal representative may be commenced by the
26 court or upon the petition of an ~~by any~~ interested person ~~or~~
27 ~~joint personal representative.~~ The court shall revoke the
28 letters of a removed personal representative. The removal of a
29 personal representative shall not exonerate the removed
30 personal representative or the removed personal
31 representative's surety from any liability.

1 Section 112. Section 733.5061, Florida Statutes, is
2 created to read:

3 733.5061 Appointment of successor upon removal.--When
4 a personal representative is removed, the court shall appoint
5 a personal representative or shall appoint a curator to serve
6 until a successor personal representative is appointed.

7 Section 113. Section 733.507, Florida Statutes, is
8 repealed.

9 Section 114. Section 733.508, Florida Statutes, is
10 amended to read:

11 733.508 Accounting and discharge of removed personal
12 representatives upon removal.--

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

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

26 Section 115. Section 733.509, Florida Statutes, is
27 amended to read:

28 733.509 Surrender of assets upon removal.--Upon entry
29 of an order removing a personal representative, the removed
30 personal representative shall immediately deliver all estate
31 assets, records, documents, papers, and other property of or

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

8 Section 116. Section 733.601, Florida Statutes, is
9 amended to read:

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

22 Section 117. Section 733.602, Florida Statutes, is
23 amended to read:

24 733.602 General duties.--

25 (1) A personal representative is a fiduciary who shall
26 observe the standards of care applicable to trustees as
27 described by s. 737.302. A personal representative is under a
28 duty to settle and distribute the estate of the decedent in
29 accordance with the terms of the decedent's will and this code
30 as expeditiously and efficiently as is consistent with the
31 best interests of the estate. A personal representative shall

1 use the authority conferred ~~upon him or her~~ by this code, the
2 authority in the will, if any, and the authority of any order
3 of the court in proceedings to which he or she is party, for
4 the best interests of interested persons, including creditors
5 ~~as well as beneficiaries.~~

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

20 Section 118. Section 733.603, Florida Statutes, is
21 amended to read:

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

31

1 Section 119. Section 733.604, Florida Statutes, is
2 amended to read:

3 733.604 Inventory.--

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

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

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

1 ~~service. The inventory shall be verified by the personal~~
2 ~~representative.~~

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

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

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

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

26 ~~Upon the written request of a beneficiary for any asset~~
27 ~~specifically devised to that beneficiary, a beneficiary for~~
28 ~~any asset received by that beneficiary in satisfaction of a~~
29 ~~general devise, or a residuary beneficiary of a intestate~~
30 ~~estate or an heir of an intestate estate, for any asset not~~
31 ~~specifically devised, the personal representative shall~~

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

13 Section 120. Section 733.605, Florida Statutes, is
14 repealed.

15 Section 121. Section 733.6065, Florida Statutes, is
16 created to read:

17 733.6065 Opening safe-deposit box.--The initial
18 opening of the decedent's safe-deposit box shall be conducted
19 in the presence of any two of the following persons: an
20 employee of the institution where the box is located, the
21 personal representative, or the personal representative's
22 attorney of record. Each person who is present must verify
23 the contents of the box by signing a copy of the inventory
24 under penalties of perjury. The personal representative shall
25 file the safe-deposit box inventory, together with a copy of
26 the box entry record from a date which is 6 months prior to
27 the date of death to the date of inventory, with the court
28 within 10 days after the box is opened. Unless otherwise
29 ordered by the court, this inventory and the attached box
30 entry record is subject to inspection only by persons entitled
31

1 to inspect an inventory under s. 733.604(1). The personal
2 representative may remove the contents of the box.

3 Section 122. Section 733.607, Florida Statutes, is
4 amended to read:

5 733.607 Possession of estate.--

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

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

1 Section 123. Section 733.608, Florida Statutes, is
2 amended to read:

3 733.608 General power of the personal
4 representative.--

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

9 (a)~~(1)~~ For the payment of devises, ~~debts~~, family
10 allowance, elective share, estate and inheritance taxes,
11 claims, charges, and expenses of the administration and
12 obligations of the decedent's estate.

13 (b)~~(2)~~ To enforce contribution and equalize
14 advancement.

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

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

29 Section 124. Section 733.609, Florida Statutes, is
30 amended to read:

31

1 733.609 Improper exercise of power; breach of
2 fiduciary duty.--A personal representative's fiduciary duty is
3 the same as the fiduciary duty of a trustee of an express
4 trust and a personal representative is liable to interested
5 persons for damage or loss resulting from the breach of this
6 duty. In all actions for breach of fiduciary duty or
7 challenging the exercise of or failure to exercise a personal
8 representative's powers, the court shall award taxable costs
9 as in chancery actions, including attorney's fees ~~if the~~
10 ~~exercise of power concerning the estate is improper or in bad~~
11 ~~faith, the personal representative is liable to interested~~
12 ~~persons for damage or loss resulting from a breach of his or~~
13 ~~her fiduciary duty to the same extent as a trustee of an~~
14 ~~express trust. In all actions challenging the proper exercise~~
15 ~~of a personal representative's powers, the court shall award~~
16 ~~taxable costs as in chancery actions, including attorney's~~
17 ~~fees.~~

18 Section 125. Section 733.610, Florida Statutes, is
19 amended to read:

20 733.610 Sale, encumbrance or transaction involving
21 conflict of interest.--Any sale or encumbrance to the personal
22 representative or the personal representative's his or her
23 spouse, agent, or attorney, or any corporation or trust in
24 which the personal representative has a substantial beneficial
25 interest, or any transaction that is affected by a conflict of
26 interest on the part of the personal representative, is
27 voidable by any interested person except one who has consented
28 after fair disclosure, unless:

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

31

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

3 Section 126. Section 733.611, Florida Statutes, is
4 amended to read:

5 733.611 Persons dealing with the personal
6 representative; protection.--Except as provided in s.
7 733.613(1), a person who in good faith either assists or deals
8 for value with a personal representative ~~or deals with him or~~
9 ~~her for value~~ is protected as if the personal representative
10 acted properly ~~exercised his or her power~~. The fact that a
11 person knowingly deals with the personal representative does
12 not ~~alone~~ require the person to inquire into the authority of
13 the personal representative ~~existence of his or her power, the~~
14 ~~limits on the power, or the propriety of its exercise~~. A
15 person is not bound to see to the proper application of estate
16 assets paid or delivered to the personal representative. This
17 ~~The protection here expressed~~ extends to instances in which a
18 procedural irregularity or jurisdictional defect occurred in
19 proceedings leading to the issuance of letters, including a
20 case in which the alleged decedent is alive. This protection
21 is in addition to any protection afforded by ~~The protection~~
22 ~~here expressed is not by substitution for that provided in~~
23 comparable provisions of the laws relating to commercial
24 transactions and laws simplifying transfers of securities by
25 fiduciaries.

26 Section 127. Section 733.612, Florida Statutes, is
27 amended to read:

28 733.612 Transactions authorized for the personal
29 representative; exceptions.--Except as otherwise provided by
30 the will or court ~~by order of court~~, and subject to the
31 priorities stated in s. 733.805, without court ~~order of court~~,

1 a personal representative, acting reasonably for the benefit
2 of the interested persons, may properly:

3 (1) Retain assets owned by the decedent, pending
4 distribution or liquidation, including those in which the
5 personal representative is personally interested or that are
6 otherwise improper for fiduciary trust investments.

7 (2) Perform or ~~compromise~~, or, when proper, refuse to
8 perform performance of, the decedent's contracts. In
9 performing the decedent's enforceable contracts ~~by the~~
10 ~~decedent~~ to convey or lease real property, among other
11 possible courses of action, the personal representative may:

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

15 (b) Deliver a deed in escrow, with directions that the
16 proceeds, when paid in accordance with the escrow agreement,
17 be paid as provided ~~to the distributees of the decedent, as~~
18 ~~designated~~ in the escrow agreement.

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

20 (4) Invest funds as provided in ss. 518.10-518.14,
21 considering the amount to be invested, liquidity needs of the
22 estate, and the time until distribution will be made ~~if funds~~
23 ~~are not needed to meet debts and expenses currently payable~~
24 ~~and are not immediately distributable, deposit or invest~~
25 ~~liquid assets of the estate, including moneys received from~~
26 ~~the sale of other assets, in federally insured~~
27 ~~interest-bearing accounts, readily marketable secured loan~~
28 ~~arrangements, or other prudent investments that would be~~
29 ~~reasonable for use by trustees.~~

30 (5) Acquire or dispose of an asset, excluding real
31 property in this or another state, for cash or on credit and

1 at public or private sale, and manage, develop, improve,
2 exchange, partition, or change the character of an estate
3 asset.

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

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

10 (8) Enter into a lease or arrangement for exploration
11 and removal of minerals or other natural resources or enter
12 into a pooling or unitization agreement.

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

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

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

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

25 (13) Insure the assets of the estate against damage
26 or loss, and liability and insure against personal and
27 fiduciary liability ~~himself or herself against liability~~ to
28 third persons.

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

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

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

10 (17) Sell or exercise stock subscription or conversion
11 rights or consent, directly or through a committee or other
12 agent, to the reorganization, consolidation, merger,
13 dissolution, or liquidation of a corporation or other business
14 enterprise.

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

17 (19) Employ persons, including, but not limited to,
18 attorneys, accountants, auditors, appraisers, investment
19 advisers, and others, even if they are one and the same as the
20 personal representative or are associated with the personal
21 representative, to advise or assist the personal
22 representative in the performance of ~~his or her~~ administrative
23 duties; act upon the recommendations of those ~~such~~ employed
24 persons without independent investigation; and, instead of
25 acting personally, employ one or more agents to perform any
26 act of administration, whether or not discretionary. Any fees
27 and compensation paid to a ~~any such~~ person who is the same as,
28 associated with, or employed by, the personal representative
29 shall be taken into consideration in determining the personal
30 representative's compensation.

31

1 (20) Prosecute or defend claims or proceedings in any
2 jurisdiction for the protection of the estate and of the
3 personal representative ~~in the performance of his or her~~
4 ~~duties.~~

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

9 (22) Continue any unincorporated business or venture
10 in which the decedent was engaged at the time of ~~his or her~~
11 death:

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

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

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

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

23 (25) Enter into agreements with the proper officer or
24 department head, commissioner, or agent of any department of
25 the government of the United States, waiving the statute of
26 limitations concerning the assessment and collection of any
27 federal tax or any deficiency in a federal tax.

28 (26) Make partial ~~part~~ distribution to the
29 beneficiaries of any part of the estate not necessary to
30 satisfy claims, expenses of administration, taxes, family
31 allowance, exempt property, and an elective share, in

1 accordance with the decedent's will or as authorized by
2 operation of law.

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

5 Section 128. Section 733.6121, Florida Statutes, is
6 amended to read:

7 733.6121 Powers of personal representatives conferred
8 by this part in relation to environmental or human health laws
9 affecting property subject to administration or to property
10 subject to administration contaminated with hazardous or toxic
11 substances; liability.--

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

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

19 (a) To inspect or investigate, or cause to be
20 inspected or investigated, property subject to administration,
21 including interests in sole proprietorships, partnerships, or
22 corporations and any assets owned by ~~any~~ such a business
23 entity for the purpose of determining compliance with an
24 environmental law affecting that property or to respond to an
25 actual or threatened violation of an environmental law
26 affecting that property;

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

1 (c) To settle or compromise at any time any claim
2 against the estate or the personal representative that may be
3 asserted by a governmental body or private party which
4 involves the alleged violation of an environmental law
5 affecting property subject to administration over which the
6 personal representative has responsibility;

7 (d) To disclaim any power granted by any document,
8 statute, or rule of law which, in the sole judgment of the
9 personal representative, could cause the personal
10 representative to incur personal liability, or the estate to
11 incur liability, under any environmental law;

12 (e) To decline to serve as a personal representative,
13 or having undertaken to serve ~~as a personal representative,~~
14 to resign at any time, if the personal representative believes
15 that there is or could be a conflict of interest ~~in his or her~~
16 ~~fiduciary capacity and in his or her individual capacity~~
17 because of potential claims or liabilities that could be
18 asserted ~~against it~~ on behalf of the estate by reason of the
19 type or condition of the assets held; or

20 (f) To charge against the assets of the estate the
21 cost of any inspection, investigation, review, abatement,
22 response, cleanup, or remedial action considered reasonable by
23 the personal representative ~~that this section authorizes the~~
24 ~~personal representative to take;~~ and, in the event of the
25 closing or termination of the estate or the transfer of the
26 estate property to another personal representative, to hold
27 moneys sufficient to cover the cost of cleaning up any known
28 environmental problem.

29 (3) A personal representative is not personally liable
30 to any beneficiary or any other party for a decrease in value
31 of assets in an estate by reason of the personal

1 representative's compliance or efforts to comply with an
2 environmental law, specifically including any reporting
3 requirement under that law.

4 (4) A personal representative who acquires ownership
5 or control of a vessel or other property without having owned,
6 operated, or materially participated in the management of that
7 vessel or property before assuming ownership or control as
8 personal representative is not considered an owner or operator
9 for purposes of liability under chapter 376, chapter 403, or
10 any other environmental law. A personal representative who
11 willfully, knowingly, or recklessly causes or exacerbates a
12 release or threatened release of a hazardous substance is
13 personally liable for the cost of the response, to the extent
14 that the release or threatened release is attributable to the
15 personal representative's activities. This subsection does
16 not preclude the filing of claims against the assets that
17 constitute the estate held by the personal representative or
18 the filing of actions against the personal representative as
19 representative of the estate ~~in his or her representative~~
20 ~~capacity~~. In ~~any~~ such an action, an award or judgment against
21 the personal representative must be satisfied only from the
22 assets of the estate.

23 (5) Neither the acceptance by the personal
24 representative of the property or a failure by the personal
25 representative to inspect or investigate the property creates
26 any inference of ~~as to whether there is~~ liability under an
27 environmental law with respect to that property.

28 (6) For the purposes of this section, the term
29 "environmental law" means a federal, state, or local law,
30 rule, regulation, or ordinance that relates to protection of
31 the environment or human health, and the term "hazardous

1 substance" means a substance, material, or waste defined as
2 hazardous or toxic, or any contaminant, pollutant, or
3 constituent thereof, or otherwise regulated by an
4 environmental law.

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

7 Section 129. Section 733.613, Florida Statutes, is
8 amended to read:

9 733.613 Personal representative's right to sell real
10 property.--

11 (1) When a personal representative of an ~~a decedent~~
12 ~~dying~~ intestate estate, or of an estate whose testator has not
13 conferred ~~upon him or her~~ a power of sale or whose testator
14 has granted a power of sale but the ~~his or her~~ power is so
15 limited by the will or by operation of law that it cannot be
16 conveniently exercised, shall consider that it is for the best
17 interest of the estate and of those interested in it that real
18 property be sold, the personal representative may sell it at
19 public or private sale. No title shall pass until ~~the sale is~~
20 ~~authorized or confirmed by the court~~ authorizes or confirms
21 the sale. ~~Petition for authorization or confirmation of sale~~
22 ~~shall set forth the reasons for the sale, a description of the~~
23 ~~property sold or to be sold, and the price and terms of the~~
24 ~~sale. Except when interested persons have joined in the~~
25 ~~petition for sale of real property or have consented to the~~
26 ~~sale, notice of the petition shall be given.~~No bona fide
27 purchaser shall be required to examine any proceedings before
28 the order of sale.

29 (2) When a decedent's will confers specific power to
30 sell or mortgage real property or a general power to sell any
31 asset of the estate, the personal representative may sell,

1 mortgage, or lease, without authorization or confirmation of
2 court, any real property of the estate or any interest therein
3 for cash or credit, or for part cash and part credit, and with
4 or without security for unpaid balances. The sale, mortgage,
5 or lease need not be justified by a showing of necessity, and
6 the sale pursuant to power of sale shall be valid.

7 (3) In a sale or mortgage that occurs under a specific
8 power to sell or mortgage real property, or under a court
9 order authorizing or confirming that act, the purchaser or
10 lender takes title free of claims of creditors of the estate
11 and entitlements of estate beneficiaries.

12 Section 130. Section 733.614, Florida Statutes, is
13 amended to read:

14 733.614 Powers and duties of successor personal
15 representative.--A successor personal representative has the
16 same power and duty as the original personal representative to
17 complete the administration and distribution of the estate as
18 expeditiously as possible, but ~~he or she~~ shall not exercise
19 any power made personal to the personal representative named
20 in the will without court approval.

21 Section 131. Section 733.615, Florida Statutes, is
22 amended to read:

23 733.615 Joint personal representatives; when joint
24 action required.--

25 (1) If two or more persons are appointed joint
26 personal representatives, and unless the will provides
27 otherwise, the concurrence of all joint personal
28 representatives appointed pursuant to a will or codicil
29 executed prior to October 1, 1987, or appointed to administer
30 an intestate estate of a decedent who died prior to October 1,
31 1987, or of a majority of joint personal representatives

1 appointed pursuant to a will or codicil executed on or after
2 October 1, 1987, or appointed to administer an ~~the~~ intestate
3 estate of a decedent dying on or after October 1, 1987, is
4 required on all acts connected with the administration and
5 distribution of the estate. This restriction does not apply
6 when any joint personal representative receives and receipts
7 for property due the estate, when the concurrence required
8 under this subsection cannot readily be obtained in the time
9 reasonably available for emergency action necessary to
10 preserve the estate, or when a joint personal representative
11 has been delegated to act for the others.

12 (2) Where action by a majority of the joint personal
13 representatives appointed is authorized, a joint personal
14 representative who has not joined in exercising a power is not
15 liable to the beneficiaries or to others for the consequences
16 of the exercise, and a dissenting joint personal
17 representative is not liable for the consequences of an action
18 act in which the dissenting personal representative ~~he or she~~
19 joins at the direction of the majority of the joint personal
20 representatives, if the dissent is ~~he or she~~ expressed ~~his or~~
21 ~~her dissent~~ in writing to the other ~~any of his or her~~ joint
22 personal representatives at or before the time of the action
23 joinder.

24 (3) A person dealing with a joint personal
25 representative without actual knowledge that joint personal
26 representatives have been appointed, or if advised by a ~~the~~
27 joint personal representative ~~with whom he or she deals~~ that
28 the joint personal representative has authority to act alone
29 for any of the reasons mentioned in subsection (1), is as
30 fully protected in dealing with that joint personal
31 representative as if that joint personal representative

1 possessed and properly exercised the power ~~he or she purports~~
2 ~~to exercise.~~

3 Section 132. Section 733.616, Florida Statutes, is
4 amended to read:

5 733.616 Powers of surviving personal
6 representatives.--Unless otherwise provided by the terms of
7 the will or a court order ~~otherwise provide~~, every power
8 exercisable by joint personal representatives may be exercised
9 by the one or more remaining after the appointment of one or
10 more is terminated.~~, and~~ If one or more, but not all,
11 nominated as joint personal representatives are not appointed,
12 those appointed may exercise all ~~the~~ powers granted to those
13 nominated incident to the office.

14 Section 133. Section 733.617, Florida Statutes, is
15 amended to read:

16 733.617 Compensation of personal representative.--

17 (1) A personal representative shall be entitled to a
18 commission payable from the estate assets without court order
19 as compensation for ordinary services. The commission shall
20 be based on the compensable value of the estate, which is the
21 inventory value of the probate estate assets and the income
22 earned by the estate during administration ~~As compensation for~~
23 ~~its ordinary services, a personal representative shall be~~
24 ~~entitled, without order of court unless otherwise stated, to a~~
25 ~~commission payable from the estate assets. Such commission~~
26 ~~shall be based upon the probate estate's value as determined~~
27 ~~finally for probate inventory purposes and as accounted for by~~
28 ~~the personal representative, which value shall include all~~
29 ~~property, real or personal, tangible or intangible, and all~~
30 ~~income earned thereon.~~

31

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

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

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

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

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

13 (3) In addition to the previously described aforesaid
14 commission, a personal representative shall be allowed ~~such~~
15 further compensation as is the court may deem just and
16 reasonable for any extraordinary services including, but not
17 limited to:

18 (a) The sale of real or personal property.

19 (b) The conduct of litigation on behalf of or against
20 the estate.

21 (c) Involvement in proceedings for the adjustment or
22 payment of any taxes.

23 (d) The carrying on of the decedent's business.

24 (e) Dealing with protected homestead.

25 (f) ~~(e)~~ Any other special services that ~~which~~ may be
26 necessary for the personal representative to perform.

27 (4) If the a decedent's will provides that a personal
28 representative's compensation shall be based upon specific
29 criteria, other than a general reference to commissions
30 allowed by law or words or similar import, including, but not
31 limited to, rates, amounts, commissions, or reference to the

1 personal representative's regularly published schedule of fees
2 in effect at the decedent's date of death, or words of similar
3 import, then a personal representative shall be entitled to
4 compensation in accordance with that ~~such~~ provision. However,
5 except for ~~such~~ references in the ~~a decedent's~~ will 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, if there is no written contract with the decedent
9 regarding compensation, a personal representative may renounce
10 the provisions contained in the will and be entitled to
11 compensation under this section hereunder. A personal
12 representative may also renounce the ~~its~~ right to all or any
13 part of the compensation.

14 (5) If the probate estate's compensable value ~~as~~
15 ~~defined in subsection (1)~~ is \$100,000 or more, and there are
16 two representatives, each personal representative is entitled
17 to the full commission allowed to a sole personal
18 representative. If there are more than two personal
19 representatives and the probate estate's compensable value is
20 ~~more than~~ \$100,000 or more, the compensation to which two
21 would be entitled must be apportioned among the personal
22 representatives. The basis for ~~such~~ apportionment shall be
23 one full commission allowed to the personal representative who
24 has possession of and primary responsibility for
25 administration of the assets and one full commission among the
26 remaining personal representatives according to the services
27 rendered by each of them respectively. If the probate
28 estate's compensable value is less than \$100,000 and there is
29 more than one personal representative, then one full
30 commission ~~allowed herein to a sole personal representative~~
31 must be apportioned among the personal representatives

1 according to the services rendered by each of them
2 respectively.

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

8 (7) Upon petition of any interested person, the court
9 may increase or decrease the compensation for ordinary
10 services of the personal representative or award compensation
11 for extraordinary services if the facts and circumstances of
12 the particular administration warrant. In determining
13 reasonable compensation, the court shall consider all of the
14 following factors, giving weight to each as it determines
15 appropriate ~~The compensation for a personal representative as~~
16 ~~set forth in subsections (2) and (3) may, upon petition of any~~
17 ~~interested person, be increased or decreased by the court. In~~
18 ~~determining whether to increase or decrease the compensation~~
19 ~~for ordinary services, the court must consider each of the~~
20 ~~following factors, giving each such weight as it determines to~~
21 ~~be appropriate:~~

22 (a) The promptness, efficiency, and skill with which
23 the administration was handled by the personal representative;

24 (b) The responsibilities assumed by and the potential
25 liabilities of the personal representative;

26 (c) The nature and value of the assets that are
27 affected by the decedent's death;

28 (d) The benefits or detriments resulting to the estate
29 or interested persons ~~its beneficiaries~~ from the personal
30 representative's services;

31

1 (e) The complexity or simplicity of the administration
2 and the novelty ~~novelties~~ of the issues presented;

3 (f) The personal representative's participation in tax
4 planning for the estate and the estate's beneficiaries and in
5 tax return preparation, review, or approval;

6 (g) The nature of the probate, nonprobate, and exempt
7 assets, the expenses of administration, the liabilities of
8 the decedent, and the compensation paid to other
9 professionals and fiduciaries;

10 (h) Any delay in payment of the compensation after the
11 services were furnished; and

12 (i) Any other relevant factors.

13 Section 134. Section 733.6171, Florida Statutes, is
14 amended to read:

15 733.6171 Compensation of attorney for the personal
16 representative.--

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

20 (2) The attorney, the personal representative, and
21 persons bearing the impact of the compensation may agree to
22 compensation determined in a different manner than provided in
23 this section. Compensation may also be determined in a
24 different manner than provided in this section if the manner
25 is disclosed to the parties bearing the impact of the
26 compensation and if no objection is made as provided for in
27 the Florida Probate Rules ~~in the petition for discharge or~~
28 ~~final accounting and there is no objection filed pursuant to~~
29 ~~s. 733.901.~~

30 (3) Compensation ~~provided in the following schedule~~
31 for ordinary services of attorneys in formal estate

1 administration is presumed to be reasonable if based on the
2 compensable upon the inventory value of the estate, which is
3 the inventory value of the probate estate assets and the
4 income earned by the estate during the administration as
5 provided in the following schedule is presumed to be
6 ~~reasonable compensation for attorneys in formal estate~~
7 ~~administration:~~
8 (a) One thousand five hundred dollars for estates
9 having a value of \$40,000 or less.
10 (b) An additional \$750 for estates having a value of
11 more than \$40,000 and not exceeding \$70,000.
12 (c) An additional \$750 for estates having a value of
13 more than \$70,000 and not exceeding \$100,000.
14 (d) For estates having a value in excess of \$100,000,
15 at the rate of 3 percent on the next \$900,000.
16 (e) At the rate of 2.5 percent for all above \$1
17 million and not exceeding \$3 million.
18 (f) At the rate of 2 percent for all above \$3 million
19 and not exceeding \$5 million.
20 (g) At the rate of 1.5 percent for all above \$5
21 million and not exceeding \$10 million.
22 (h) At the rate of 1 percent for all above \$10
23 million.
24 (4) In addition to ~~the attorney's~~ fees for ordinary
25 services, the attorney for the personal representative shall
26 be allowed further reasonable compensation for any
27 extraordinary service. What is an extraordinary service may
28 vary depending on many factors, including the size of the
29 estate. Extraordinary services may include, but are not
30 limited to:
31

1 (a) Involvement in a will contest, will construction,
2 a proceeding for determination of beneficiaries, a contested
3 claim, elective share proceeding, apportionment of estate
4 taxes, or any ~~other~~ adversarial proceeding or litigation by or
5 against the estate.

6 (b) Representation of the personal representative in
7 audit or any proceeding for adjustment, determination, or
8 collection of any taxes.

9 (c) Tax advice on postmortem tax planning, including,
10 but not limited to, disclaimer, renunciation of fiduciary
11 commission, alternate valuation date, allocation of
12 administrative expenses between tax returns, the QTIP or
13 reverse QTIP election, allocation of GST exemption,
14 qualification for Internal Revenue Code ss. 6166 and 303
15 privileges, deduction of last illness expenses, fiscal year
16 planning, distribution planning, asset basis considerations,
17 handling income or deductions in respect of a decedent,
18 valuation discounts, special use and other valuation, handling
19 employee benefit or retirement proceeds, prompt assessment
20 request, or request for release of personal liability for
21 payment of tax.

22 (d) Review of estate tax return and preparation or
23 review of other tax returns required to be filed by the
24 personal representative.

25 (e) Preparation of the estate's federal estate tax
26 return. If this return is prepared by the attorney, a fee of
27 one-half of 1 percent up to a value of \$10 million and
28 one-fourth of 1 percent on the value in excess of \$10 million
29 of the gross estate as finally determined for federal estate
30 tax purposes, is presumed to be reasonable compensation for
31 the attorney for this service. These fees shall include

1 services for routine audit of the return, not beyond the
2 examining agent level, if required.

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

6 (g) Legal advice regarding carrying on of the
7 decedent's business or conducting other commercial activity by
8 the personal representative.

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

11 (i) Legal advice regarding homestead status of real
12 property or proceedings involving that status and services
13 related to protected homestead.

14 (j) Involvement in fiduciary, employee, or attorney
15 compensation disputes.

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

18 (5) Upon petition of any interested person, the court
19 may increase or decrease the compensation for ordinary
20 services of the attorney or award compensation for
21 extraordinary services if the facts and circumstances of the
22 particular administration warrant. In determining reasonable
23 compensation, the court shall consider all of the following
24 factors, giving ~~such~~ weight to each as it determines ~~may~~
25 ~~determine to be~~ appropriate:

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

28 (b) The responsibilities assumed by, and the potential
29 liabilities of, the attorney.

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

1 (d) The benefits or detriments resulting to the estate
2 or interested persons ~~its beneficiaries~~ from the attorney's
3 services.

4 (e) The complexity or simplicity of the administration
5 and the novelty of issues presented.

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

9 (g) The nature of the probate, nonprobate, and exempt
10 assets, the expenses of administration, the ~~and~~ liabilities of
11 the decedent, and the compensation paid to other professionals
12 and fiduciaries.

13 (h) Any delay in payment of the compensation after the
14 services were furnished.

15 (i) Any other relevant factors.

16 ~~(6) The court may determine reasonable attorney's~~
17 ~~compensation without receiving expert testimony. Any party~~
18 ~~may offer expert testimony after notice to interested persons.~~
19 ~~If expert testimony is offered, an expert witness fee may be~~
20 ~~awarded by the court and paid from the assets of the estate.~~
21 ~~The court may, in its discretion, direct from what part of the~~
22 ~~estate it shall be paid.~~

23 (6)(7) If a separate written agreement regarding
24 compensation exists between the attorney and the decedent, the
25 attorney shall furnish a copy to the personal representative
26 prior to commencement of employment, and, if employed, shall
27 promptly file and serve a copy on all interested persons.
28 Neither a separate agreement nor a provision in the will
29 suggesting or directing that the personal representative ~~to~~
30 retain a specific attorney will obligate the personal
31 representative to employ the attorney or obligate the attorney

1 to accept the representation, but if the attorney who is a
2 party to the agreement or who drafted the will is employed,
3 the compensation paid shall not exceed the compensation
4 provided in the agreement or in the will.

5 ~~(8) Court proceedings to determine compensation, if~~
6 ~~required, are a part of the estate administration process, and~~
7 ~~the costs, including fees for the personal representative's~~
8 ~~attorney, shall be determined by the court and paid from the~~
9 ~~assets of the estate unless the court finds the request for~~
10 ~~attorney's fees to be substantially unreasonable. The court~~
11 ~~shall direct from which part of the estate they shall be paid.~~

12 ~~(9) The amount and manner of determining compensation~~
13 ~~for attorneys for personal representatives must be disclosed~~
14 ~~in the final accounting, unless the disclosure is waived in~~
15 ~~writing signed by the parties bearing the impact of the~~
16 ~~compensation and filed with the court. No such waiver shall~~
17 ~~be valid unless it contains language declaring that the~~
18 ~~waiving party has actual knowledge of the amount and manner of~~
19 ~~determining such compensation and, in addition, expressly~~
20 ~~acknowledging either one of the following two elements:~~

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

24 ~~(b) That the waiving party has the right under~~
25 ~~subsection (5) to petition the court to decrease such~~
26 ~~compensation and is waiving that right.~~

27
28 ~~The requirements of this subsection shall not apply if the~~
29 ~~full amount of such compensation has previously been~~
30 ~~determined by order of the court after notice. A waiver of~~
31

1 ~~the final accounting shall not be effective if it does not~~
2 ~~meet the requirements of this subsection.~~

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

7 Section 135. Section 733.6175, Florida Statutes, is
8 amended to read:

9 733.6175 Proceedings for review of employment of
10 agents and compensation of personal representatives and
11 employees of estate.--

12 (1) The court may review the propriety of the
13 employment of any person employed by the personal
14 representative and the reasonableness of any compensation paid
15 to that person or to the personal representative.

16 (2) Court proceedings to determine reasonable
17 compensation of the personal representative or any person
18 employed by the personal representative, if required, are a
19 part of the estate administration process, and the costs,
20 including attorneys' fees, of the person assuming the burden
21 of proof of propriety of the employment and reasonableness of
22 the compensation shall be determined by the court and paid
23 from the assets of the estate unless the court finds the
24 requested compensation to be substantially unreasonable. The
25 court shall direct from which part of the estate the
26 compensation shall be paid.

27 ~~(3) After notice to all affected interested persons~~
28 ~~and upon petition of an interested person bearing all or part~~
29 ~~of the impact of the payment of compensation to the personal~~
30 ~~representative or any person employed by him or her, the~~
31 ~~propriety of such employment and the reasonableness of such~~

1 ~~compensation or payment may be reviewed by the court.~~The
2 burden of proof of propriety of the ~~such~~ employment and the
3 reasonableness of the compensation shall be upon the personal
4 representative and the person employed ~~by him or her~~. Any
5 person who is determined to have received excessive
6 compensation from an estate for services rendered may be
7 ordered to make appropriate refunds.

8 (4) The court may determine reasonable compensation
9 for the personal representative or any person employed by the
10 personal representative without receiving expert testimony.
11 Any party may offer expert testimony after notice to
12 interested persons. If expert testimony is offered, a
13 reasonable expert witness fee shall be awarded by the court
14 and paid from the assets of the estate. The court shall direct
15 from what part of the estate the fee shall be paid.

16 Section 136. Section 733.619, Florida Statutes, is
17 amended to read:

18 733.619 Individual liability of personal
19 representative.--

20 (1) Unless otherwise provided in the contract, a
21 personal representative is not individually liable on a
22 contract, except a contract for attorney's fee, properly
23 entered into as ~~in his or her~~ fiduciary ~~capacity in the~~
24 ~~administration of the estate~~ unless the personal
25 representative fails to reveal that ~~his or her~~ representative
26 capacity and identify the estate in the contract.

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

31

1 (3) Claims based on contracts, except a contract for
2 attorney's fee, entered into by a personal representative as a
3 fiduciary in his or her fiduciary capacity, on obligations
4 arising from ownership or control of the estate, or on torts
5 committed in the course of estate administration, may be
6 asserted against the estate by proceeding against the personal
7 representative in that ~~his or her fiduciary~~ capacity, whether
8 or not the personal representative is individually liable
9 ~~therefor~~.

10 (4) Issues of liability as between the estate and the
11 personal representative individually may be determined in a
12 proceeding for accounting, surcharge, or indemnification, or
13 other appropriate proceeding.

14 Section 137. Section 733.701, Florida Statutes, is
15 amended to read:

16 733.701 Notifying creditors.--Unless creditors' claims
17 are otherwise barred by s. 733.710 ~~the proceedings are under~~
18 ~~chapter 734 or chapter 735~~, every personal representative
19 shall cause notice to creditors ~~of administration~~ to be
20 published and served under s. 733.2121 ~~733.212~~.

21 Section 138. Section 733.702, Florida Statutes, is
22 amended to read:

23 733.702 Limitations on presentation of claims.--

24 (1) If not barred by s. 733.710, no claim or demand
25 against the decedent's estate that arose before the death of
26 the decedent, including claims of the state and any of its
27 subdivisions, even if the claims are unmatured, contingent,
28 ~~whether due or not, direct or contingent, or liquidated or~~
29 ~~unliquidated~~; no claim for funeral or burial expenses; no
30 claim for personal property in the possession of the personal
31 representative; and no claim for damages, including, but not

1 limited to, an action founded on fraud or another wrongful act
2 or omission of the decedent, is binding on the estate, on the
3 personal representative, or on any beneficiary unless filed in
4 the probate proceeding within the later of 3 months after the
5 time of the first publication of the notice to creditors of
6 ~~administration~~ or, as to any creditor required to be served
7 with a copy of the notice to creditors ~~of administration~~, 30
8 days after the date of service ~~of such copy of the notice~~ on
9 the creditor, even though the personal representative has
10 recognized the claim or demand by paying a part of it or
11 interest on it or otherwise. The personal representative may
12 settle in full any claim without the necessity of the claim
13 being filed when the settlement has been approved by the
14 interested persons ~~beneficiaries adversely affected according~~
15 ~~to the priorities provided in this code and when the~~
16 ~~settlement is made within the statutory time for filing~~
17 ~~claims; or, within 3 months after the first publication of the~~
18 ~~notice of administration, he or she may file a proof of claim~~
19 ~~of all claims he or she has paid or intends to pay.~~

20 (2) No cause of action ~~heretofore or hereafter~~
21 ~~accruing~~, including, but not limited to, an action founded
22 upon fraud or other wrongful act or omission, shall survive
23 the death of the person against whom the claim may be made,
24 whether or not an action is pending at the death of the person
25 ~~or not~~, unless a ~~the~~ claim is filed within the time periods
26 set forth in this part.

27 (3) Any claim not timely filed as provided in this
28 section is barred even though no objection to the claim is
29 ~~filed on the grounds of timeliness or otherwise~~ unless the
30 court extends the time in which the claim may be filed. ~~Such~~
31 An extension may be granted only upon grounds of fraud,

1 estoppel, or insufficient notice of the claims period. No
2 independent action or declaratory action may be brought upon a
3 claim which was not timely filed unless ~~such~~ an extension has
4 been granted by the court. If the personal representative or
5 any other interested person serves on the creditor a notice to
6 file a petition for an extension ~~or be forever barred~~, the
7 creditor shall be limited to a period of 30 days from the date
8 of service of the notice in which to file a petition for
9 extension.

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

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

13 (b) To the limits of casualty insurance protection
14 only, any proceeding to establish liability that ~~of the~~
15 ~~decedent or the personal representative for which he or she is~~
16 protected by the casualty insurance.

17 ~~(c) The filing of a claim by the Department of Revenue~~
18 ~~subsequent to the expiration of the time for filing claims~~
19 ~~provided in subsection (1), provided it does so file within 30~~
20 ~~days after the service of the inventory by the personal~~
21 ~~representative on the department or, in the event an amended~~
22 ~~or supplementary inventory has been prepared, within 30 days~~
23 ~~after the service of the amended or supplementary inventory by~~
24 ~~the personal representative on the department.~~

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

29 (5) The Department of Revenue may file a claim against
30 the estate of a decedent for taxes due under chapter 199 after
31 the expiration of the time for filing claims provided in

1 subsection (1), if the department files its claim within 30
2 days after the service of the inventory. Upon filing of the
3 estate tax return with the department as provided in s.
4 198.13, or to the extent the inventory or estate tax return is
5 amended or supplemented, the department has the right to file
6 a claim or to amend its previously filed claim within 30 days
7 after service of the estate tax return, or an amended or
8 supplemented inventory or filing of an amended or supplemental
9 estate tax return, as to the additional information disclosed.

10 (6)(5) Nothing in this section shall extend the
11 limitations period set forth in s. 733.710.

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

14 733.703 Form and manner of presenting claim.--

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

24 Section 140. Section 733.704, Florida Statutes, is
25 amended to read:

26 733.704 Amendment of claims.--If a bona fide attempt
27 to file a claim is made ~~by a creditor~~ but the claim is
28 defective as to form, the court may permit the amendment of
29 the claim at any time.

30 Section 141. Section 733.705, Florida Statutes, is
31 amended to read:

1 733.705 Payment of and objection to claims.--
2 (1) The personal representative shall pay all claims
3 within 1 year from the date of first publication of notice to
4 creditors of administration, provided that the time shall be
5 extended with respect to claims in litigation, unmatured
6 claims, and contingent claims for the period necessary to
7 dispose of those ~~such~~ claims pursuant to subsections~~(4)~~, (5),
8 (6), ~~and (7)~~, and (8). The court may extend the time for
9 payment of any claim upon a showing of good cause. No
10 personal representative shall be compelled to pay the debts of
11 the decedent until after the expiration of 5 months from the
12 first publication of notice to creditors ~~of administration~~.
13 If any person brings an action against a personal
14 representative within the 5 months on any claim to which the
15 personal representative has not filed an ~~no~~ objection, the
16 plaintiff shall not receive any costs or attorneys' fees ~~if he~~
17 ~~or she prevails~~, nor shall the judgment change the class of
18 the claim for payment under this code.
19 (2) On or before the expiration of 4 months from the
20 first publication of notice to creditors ~~of administration~~ or
21 within 30 days from the timely filing or amendment of a claim,
22 whichever occurs later, a personal representative or other
23 interested person may file a written objection to a claim. ~~An~~
24 ~~objection to a claim shall contain a statement that the~~
25 ~~claimant is limited to a period of 30 days from the date of~~
26 ~~service of the objection within which to bring an action on~~
27 ~~the claim as provided in subsection (4). The failure to~~
28 ~~include such a statement in the objection shall not affect the~~
29 ~~validity of the objection but may be considered as good cause~~
30 ~~for extending the time for filing an action or proceeding~~
31 ~~after the objection is filed.~~ If an objection is filed, the

1 person filing it shall serve a copy of the objection as
2 provided by the Florida Probate Rules ~~by registered or~~
3 ~~certified mail to the address of the claimant or the~~
4 ~~claimant's attorney as shown on the claim or by delivery to~~
5 ~~the claimant to whose claim the person objects or the~~
6 ~~claimant's attorney of record, if any, not later than 10 days~~
7 ~~after the objection has been filed, and also on the personal~~
8 ~~representative if the objection is filed by any interested~~
9 ~~person other than the personal representative. The failure to~~
10 ~~serve a copy of the objection constitutes an abandonment of~~
11 ~~the objection. For good cause, the court may extend the time~~
12 ~~for filing or serving an objection to any claim or may extend~~
13 ~~the time for serving the objection. The extension of time~~
14 ~~shall be granted only after notice. Objection to a claim~~
15 ~~constitutes an objection to an amendment of that claim unless~~
16 ~~the objection is withdrawn.~~

17 (3) If the objection is filed by a person other than
18 the personal representative, the personal representative may
19 apply to the court for an order relieving him or her of the
20 obligation to defend the estate in an independent action or
21 for the appointment of the objector as administrator ad litem
22 to defend the action. Fees for the attorney for the
23 administrator ad litem may be awarded as provided in s.
24 733.106(3). If costs or attorney's fees are awarded from or
25 against the estate, the probate court may charge or apportion
26 that award as provided in s. 733.106(4).

27 (4)~~(3)~~ An objection by an interested person to a
28 personal representative's proof of claim shall state the
29 particular item or items to which the interested person
30 objects and shall be filed and served as provided in
31 subsection (2). Issues of liability as between the estate and

1 the personal representative individually for items ~~paid by the~~
2 ~~personal representative and thereafter~~ listed in a personal
3 representative's proof of claim shall be determined in the
4 estate administration ~~proceeding~~, in a proceeding for
5 accounting ~~or~~ surcharge, or in another ~~other~~ appropriate
6 proceeding, whether or not an objection has been filed. If an
7 objection to an item listed as to be paid in a personal
8 representative's proof of claim is filed and served, and the
9 personal representative has not paid the item, the other
10 subsections of this section shall apply as if a claim for the
11 item had been filed by the claimant; but if the personal
12 representative has paid the claim after listing it as to be
13 paid, issues of liability as between the estate and the
14 personal representative individually shall be determined in
15 the manner provided for an item listed as paid.

16 (5)~~(4)~~ The claimant is limited to a period of 30 days
17 from the date of service of an objection within which to bring
18 an independent action upon the claim, or a declaratory action
19 to establish the validity and amount of an unmatured claim
20 which is not yet due but which is certain to become due in the
21 future, or a declaratory action to establish the validity of a
22 contingent claim upon which no cause of action has accrued on
23 the date of service of an objection and that may or may not
24 become due in the future, unless an extension of this time is
25 agreed to by the personal representative in writing before it
26 expires. For good cause, the court may extend the time for
27 filing an action or proceeding after objection is filed. ~~The~~
28 ~~extension of time shall be granted only after notice.~~ No
29 action or proceeding on the claim may ~~shall~~ be brought against
30 the personal representative after the time limited above, and
31 the any such claim is ~~thereafter forever~~ barred without any

1 court order. If an objection is filed to the claim of any
2 creditor and ~~an action is brought by~~ the creditor brings an
3 action to establish the ~~his or her~~ claim, a judgment
4 establishing the claim shall give it no priority over claims
5 of the same class to which it belongs.

6 (6)~~(5)~~ A claimant may bring an independent action or
7 declaratory action upon a claim which was not timely filed
8 pursuant to s. 733.702(1) only if the claimant has been
9 granted an extension of time to file the claim pursuant to s.
10 733.702(3).

11 (7)~~(6)~~ If an unmatured claim has not become due before
12 the time for distribution of an estate, the personal
13 representative may prepay the full amount of principal plus
14 accrued interest due on the claim, without discount and
15 without penalty, regardless of any prohibition against
16 prepayment or provision for penalty in any instrument on which
17 the claim is founded. If the claim is not prepaid, no order
18 of discharge may be entered until the creditor and personal
19 representative have filed an agreement disposing of the claim,
20 or in the absence of an agreement until the court provides for
21 payment by one of the following methods:

22 (a) Requiring the personal representative to reserve
23 such assets as the court determines to be adequate to pay the
24 claim when it becomes due; in fixing the amount to be
25 reserved, the court may determine the value of any security or
26 collateral to which the creditor may resort for payment of the
27 claim and may direct the reservation, if necessary, of
28 sufficient assets to pay the claim or to pay the difference
29 between the value of any security or collateral and the amount
30 necessary to pay the claim. If the estate is insolvent, the
31 court may direct a proportionate amount to be reserved. The

1 court shall direct that the amount reserved be retained by the
2 personal representative until the time that the claim becomes
3 due, and that so much of the reserved amount as is not used
4 for payment be distributed ~~thereafter~~ according to law;

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

11 (c) Making provisions ~~such other provision~~ for the
12 disposition or satisfaction of the claim as are ~~is~~ equitable,
13 and in a manner so as not to delay unreasonably the closing of
14 the estate.

15 (8)~~(7)~~ If no cause of action has accrued on a
16 contingent claim before the time for distribution of an
17 estate, no order of discharge may be entered until the
18 creditor and the personal representative have filed an
19 agreement disposing of the claim or, in the absence of an ~~such~~
20 agreement, until:

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

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

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

28 (d) The court provides for payment of the claim upon
29 the happening of the contingency by one of the methods
30 described in paragraph (a), paragraph (b), or paragraph (c) of
31 subsection (7)~~(6)~~,

1
2 whichever occurs first. No action or proceeding on the claim
3 may be brought against the personal representative after the
4 time limited above, and the claim is barred without court
5 order. If an objection is filed to the claim of any creditor
6 and the creditor brings an action to establish the claim, a
7 judgment establishing the claim shall give it no priority over
8 claims of the same class to which it belongs ~~No action or~~
9 ~~proceeding may be brought against the personal representative~~
10 ~~on the claim after the time limited above, and any such claim~~
11 ~~shall thereafter be forever barred without order of court. If~~
12 ~~an action is brought within the time limited above, a judgment~~
13 ~~establishing the claim shall give it no priority over claims~~
14 ~~of the same class to which it belongs.~~

15 ~~(9)(8)~~ No interest shall be paid by the personal
16 representative or allowed by the court on a claim until the
17 expiration of 5 calendar months from the first publication of
18 the notice of administration, unless the claim is founded on a
19 written obligation of the decedent providing for the payment
20 of interest. Interest shall be paid by the personal
21 representative on written obligations of the decedent
22 providing for the payment of interest. On all other claims,
23 interest shall be allowed and paid beginning 5 months from the
24 first publication of the notice to creditors ~~of~~
25 administration.

26 ~~(10)(9)~~ The court may determine all issues concerning
27 claims or matters not requiring trial by jury.

28 ~~(11)(10)~~ An order for extension of time authorized
29 under this section may be entered only in the estate
30 administration proceeding.

31

1 Section 142. 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 fees and attorney's fees awarded under s. 733.106(3).

11 (b) Class 2.--Reasonable funeral, interment, and grave
12 marker expenses, whether paid by a guardian ~~under s.~~
13 ~~744.441(16)~~, the personal representative, or any other person,
14 not to exceed the aggregate of \$6,000.

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

17 (d) Class 4.--Reasonable and necessary medical and
18 hospital expenses of the last 60 days of the last illness of
19 the decedent, including compensation of persons attending the
20 decedent ~~him or her~~.

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

22 (f) Class 6.--Arrearage from court-ordered child
23 support.

24 (g) Class 7.--Debts acquired after death by the
25 continuation of the decedent's business, in accordance with s.
26 733.612(22), but only to the extent of the assets of that
27 business.

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

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

5 (3) Any portion of a trust with respect to which a
6 decedent who is the grantor has at the decedent's death a
7 right of revocation, as defined in paragraph (e), either alone
8 or in conjunction with any other person, is liable for the
9 expenses of the administration and obligations of the
10 decedent's estate ~~and enforceable claims of the decedent's~~
11 ~~creditors~~ to the extent the decedent's estate is insufficient
12 to pay them as provided in s. 733.607(2).

13 (a) For purposes of this subsection, any trusts
14 established as part of, and all payments from, either an
15 employee annuity described in s. 403 of the Internal Revenue
16 Code of 1986, as amended, an Individual Retirement Account, as
17 described in s. 408 of the Internal Revenue Code of 1986, as
18 amended, a Keogh (HR-10) Plan, or a retirement or other plan
19 established by a corporation which is qualified under s. 401
20 of the Internal Revenue Code of 1986, as amended, shall not be
21 considered a trust over which the decedent has a right of
22 revocation.

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

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

31

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 143. 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

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

3 733.710 Limitations on claims against estates.--

4 (1) Notwithstanding any other provision of the code, 2
5 years after the death of a person, neither the decedent's
6 estate, the personal representative, ~~(if any)~~, nor the
7 beneficiaries shall be liable for any claim or cause of action
8 against the decedent, whether or not letters of administration
9 have been issued, except as provided in this section.

10 Section 145. Section 733.801, Florida Statutes, is
11 amended to read:

12 733.801 Delivery of devises and distributive shares.--

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

17 (2) Except as otherwise provided in the will, the
18 personal representative shall pay as an expense of
19 administration the reasonable expenses of storage, insurance,
20 packing, and delivery of tangible personal property to a
21 beneficiary.

22 Section 146. Subsections (1) and (2) of section
23 733.802, Florida Statutes, are amended to read:

24 733.802 Proceedings for compulsory payment of devises
25 or distributive interest.--

26 (1) Before final distribution, no personal
27 representative shall be compelled:

28 (a) To pay a devise in money before the final
29 settlement of the personal representative's ~~his or her~~
30 accounts,

31

1 (b) To deliver specific personal property devised ~~that~~
2 ~~may have come into his or her hands~~, unless the personal
3 property is exempt personal property,

4 (c) To pay all or any part of a distributive share in
5 the personal estate of a decedent, or

6 (d) To surrender land to any beneficiary,

7
8 unless the beneficiary establishes ~~files a petition setting~~
9 ~~forth the facts that entitle him or her to relief and stating~~
10 that the property will not be required for the payment of
11 debts, family allowance, estate and inheritance taxes, claims,
12 elective share of the surviving spouse, charges, or expenses
13 of administration or to provide ~~for providing~~ funds for
14 contribution or to enforce ~~enforcing~~ equalization in case of
15 advancements.

16 (2) An order directing the surrender of real property
17 or the delivery of personal property by the personal
18 representative to the beneficiary ~~shall describe the property~~
19 ~~to be surrendered or delivered.~~ The order shall be conclusive
20 in favor of bona fide purchasers for value from the
21 beneficiary or distributee as against the personal
22 representative and all other persons claiming by, through,
23 under, or against the decedent or the decedent's estate.

24 Section 147. Section 733.803, Florida Statutes, is
25 amended to read:

26 733.803 Encumbered property; liability for
27 payment.--The specific devisee of any encumbered property
28 shall be entitled to have the encumbrance on devised property
29 paid at the expense of the residue of the estate only when the
30 will shows that ~~such an~~ intent. A general direction in the
31 will to pay debts does not show that ~~such an~~ intent.

1 Section 148. Section 733.805, Florida Statutes, is
2 amended to read:

3 733.805 Order in which assets abate ~~are~~
4 ~~appropriated.--~~

5 (1) ~~If a testator makes provision by his or her will,~~
6 ~~or designates the~~ Funds or property designated by the will
7 shall to be used, to pay for the payment of debts, estate and
8 ~~inheritance taxes,~~ family allowance, exempt property, elective
9 share charges, expenses of administration, and devises, to the
10 extent the funds or property are ~~they shall be paid out of the~~
11 ~~funds or from the property or proceeds as provided by the will~~
12 ~~so far as~~ sufficient. If no provision is made or the
13 designated any fund or property designated, or if it is
14 insufficient, the funds and property of the estate shall be
15 used for these such purposes, ~~except as otherwise provided in~~
16 ~~s. 733.817 with respect to estate, inheritance, and other~~
17 ~~death taxes,~~ and to raise the shares of a pretermitted spouse
18 and children, except as otherwise provided in subsections (3)
19 and (4), in the following order:

20 (a) Property passing by intestacy ~~not disposed of by~~
21 ~~the will.~~

22 (b) Property devised to the residuary devisee or
23 devisees.

24 (c) Property not specifically or demonstratively
25 devised.

26 (d) Property specifically or demonstratively devised.

27 (2) Demonstrative devises shall be classed as general
28 devises upon the failure or insufficiency of funds or property
29 out of which payment should be made, to the extent of the
30 insufficiency. Devises to the decedent's surviving spouse,
31 given in satisfaction of, or instead of, the surviving

1 spouse's statutory rights in the estate, shall not abate until
2 other devisees of the same class are exhausted. Devisees given
3 for a valuable consideration shall abate with other devisees of
4 the same class only to the extent of the excess over the
5 amount of value of the consideration until all others of the
6 same class are exhausted. Except as herein provided, devisees
7 shall abate equally and ratably and without preference or
8 priority as between real and personal property. When property
9 that has been specifically devised or charged with a devise is
10 sold or used ~~taken~~ by the personal representative, other
11 devisees shall contribute according to their respective
12 interests to the devisee whose devise has been sold or used
13 ~~taken.~~, and ~~before distribution the court shall determine~~ The
14 amounts of the respective contributions shall be determined by
15 the court, and ~~they~~ shall be paid or withheld before
16 distribution is made.

17 (3) Section 733.817 shall be applied before this
18 section is applied.

19 (4) In determining the contribution required under s.
20 733.607(2), subsections (1)-(3) of this section and s.
21 737.3054(2) shall be applied as if the beneficiaries of the
22 estate and the beneficiaries of a trust described in s.
23 733.707(3), other than the estate or trust itself, were taking
24 under a common instrument.

25 Section 149. Section 733.806, Florida Statutes, is
26 amended to read:

27 733.806 Advancement.--If a person dies intestate ~~as to~~
28 ~~all his or her estate~~, property that the decedent gave during
29 ~~in his or her~~ lifetime to an heir is treated as an advancement
30 against the heir's ~~latter's~~ share of the estate only if
31 declared in a contemporaneous writing by the decedent or

1 acknowledged in writing by the heir. The property advanced
2 shall be valued at the time the heir came into possession or
3 enjoyment of the property or at the time of the death of the
4 decedent, whichever first occurs. If the recipient of the
5 property does not survive the decedent, the property shall not
6 be taken into account in computing the intestate share to be
7 received by the recipient's descendants unless the declaration
8 or acknowledgment provides otherwise.

9 Section 150. Subsections (3), (4), (5), and (6) of
10 section 733.808, Florida Statutes, are amended to read:

11 733.808 Death benefits; disposition of proceeds.--

12 (3) In the event no trustee makes proper claim to the
13 proceeds from the insurance company or other obligor within a
14 period of 6 months after the date of the death of the insured,
15 employee, or annuitant, or if satisfactory evidence is
16 furnished to the insurance company or ~~such~~ obligor within that
17 period that there is, or will be, no trustee to receive the
18 proceeds, payment shall be made by the insurance company or
19 obligor to the personal representative of the person making
20 the such designation, unless otherwise provided by agreement
21 with the insurer or ~~other~~ obligor during the lifetime of the
22 insured, employee, or annuitant.

23 (4) Death benefits payable as provided in subsection
24 (1), subsection (2), or subsection (3), unless paid to a
25 personal representative under the provisions of subsection
26 (3), shall not be deemed to be part of the decedent's estate
27 ~~of the testator or an intestate estate~~, and shall not be
28 subject to any obligation to pay the expenses of the
29 administration and obligations of the decedent's estate or for
30 contribution required from a trust under s. 733.607(2)
31 ~~transfer or estate taxes, debts, or other charges enforceable~~

1 ~~against the estate~~ to any greater extent than if the such
2 proceeds were payable directly to the beneficiaries named in
3 the trust.

4 (5) The death benefits ~~so~~ held in trust may be
5 commingled with any other assets that may properly come into
6 the trust.

7 (6) Nothing in this section shall affect the validity
8 of any designation of a beneficiary of proceeds previously
9 ~~heretofore~~ made that designates as beneficiary the trustee of
10 any trust established under a trust agreement or declaration
11 of trust or by will.

12 Section 151. Section 733.809, Florida Statutes, is
13 amended to read:

14 733.809 Right of retainer.--The amount of a
15 noncontingent indebtedness due from ~~of~~ a beneficiary to the
16 estate, ~~if due,~~ or its present value, if not due, may be
17 offset against that the beneficiary's interest. However, that,
18 ~~but the~~ beneficiary shall have ~~has~~ the benefit of any defense
19 that would be available ~~to him or her~~ in a direct proceeding
20 for recovery of the debt.

21 Section 152. Section 733.810, Florida Statutes, is
22 amended to read:

23 733.810 Distribution in kind; valuation.--

24 (1) Assets shall be distributed in kind unless:

25 (a) A general power of sale is conferred;

26 (b) A contrary intention is indicated by the will or
27 trust; or

28 (c) Disposition is made otherwise under the provisions
29 of this code. ~~Unless a general power of sale is conferred or a~~
30 ~~contrary intention is indicated by the will or unless assets~~
31 ~~are otherwise disposed of under the provisions of this code,~~

1 ~~the distributable assets of a decedent's estate shall be~~
2 ~~distributed in kind through application of the following~~
3 ~~provisions:~~

4 (2)(a) Any pecuniary devise, family allowance, or
5 other pecuniary share of the estate or trust ~~or devise payable~~
6 ~~in money~~ may be satisfied ~~by value~~ in kind if:

7 (a)1. The person entitled to ~~the~~ payment has not
8 demanded cash;

9 (b)2. The property is distributed ~~in kind is~~ valued at
10 fair market value as ~~of the date~~ of its distribution date; and

11 (c)3. No residuary devisee has requested that the
12 asset remain a part of the residuary ~~residue of the~~ estate.

13 (3)(b) When ~~it is~~ not practicable to distribute
14 undivided interests in a residuary asset ~~property~~, the asset
15 may ~~property shall~~ be sold ~~converted into cash for~~
16 ~~distribution.~~

17 (4)(2) When the ~~personal representative, trustee, or~~
18 ~~other~~ fiduciary under a will or trust ~~instrument~~ is required
19 ~~to~~, or has an option, ~~to~~, satisfy a pecuniary devise or
20 transfer in trust, ~~to~~, or for the benefit of, ~~the~~ surviving
21 spouse, ~~with an in-kind distribution~~ assets of the estate or
22 ~~trust in kind~~, at values as finally determined for federal
23 estate tax purposes, the ~~personal representative, trustee, or~~
24 ~~other~~ fiduciary shall, unless the governing will or trust
25 instrument otherwise provides, satisfy the devise or transfer
26 in trust by distribution of assets, including cash, fairly
27 representative of the appreciated or depreciated value of all
28 property available for that distribution ~~in satisfaction of~~
29 ~~the devise or transfer in trust~~, taking into consideration any
30 gains and losses realized from a prior ~~the~~ sale, ~~prior to~~

31

1 ~~distribution of the marital interest~~, of any property not
2 devised specifically, generally, or demonstratively ~~devised~~.

3 ~~(5)(3) With the consent of all beneficiaries affected,~~
4 A personal representative or a trustee is authorized to
5 distribute any distributable assets, non-pro rata among the
6 beneficiaries subject to the fiduciary's duty of impartiality
7 ~~entitled thereto~~.

8 Section 153. Section 733.811, Florida Statutes, is
9 amended to read:

10 733.811 Distribution; right or title of
11 distributee.--If a distributee receives from a fiduciary an
12 instrument transferring assets in kind, payment in
13 distribution, or possession of specific property, the
14 distributee has succeeded to the estate's interest in the
15 assets as against all persons interested in the estate.
16 However, the fiduciary may recover the assets or their value
17 if the distribution was improper ~~Proof that a distributee has~~
18 ~~received an instrument transferring assets in kind or payment~~
19 ~~in distribution or possession of specific property from a~~
20 ~~personal representative is conclusive evidence that the~~
21 ~~distributee has succeeded to the interest of the estate in the~~
22 ~~distributed assets, as against all persons interested in the~~
23 ~~estate, but the personal representative may recover the assets~~
24 ~~or their value if the distribution was improper.~~

25 Section 154. Section 733.812, Florida Statutes, is
26 amended to read:

27 733.812 Improper distribution or payment; liability of
28 distributee or payee.--~~Unless the distribution or payment no~~
29 ~~longer can be questioned because of adjudication, estoppel, or~~
30 ~~limitations, A distributee of property improperly distributed~~
31 ~~or paid or a claimant who was paid improperly must paid, if he~~

1 ~~or she has the property, is liable to~~ return the assets or
2 funds property improperly received,and the income from those
3 assets or interest on the funds ~~its income~~ since distribution
4 or payment, unless the distribution or payment cannot be
5 questioned because of adjudication, estoppel, or limitations
6 to the personal representative or to the beneficiaries
7 ~~entitled to it.~~ If the distributee or claimant ~~he or she~~ does
8 not have the property, its ~~then he or she~~ is liable to return
9 the value of the property ~~improperly received~~ at the date of
10 disposition,and its income thereon,and gain received by the
11 distributee or claimant must be returned ~~him or her.~~

12 Section 155. Section 733.813, Florida Statutes, is
13 amended to read:

14 733.813 Purchasers from distributees protected.--If
15 property distributed in kind, or a security interest in that
16 property therein, is acquired by a purchaser or lender for
17 value from a distributee ~~who has received an instrument of~~
18 ~~distribution or possession from the personal representative,~~
19 the purchaser or lender takes title free of any claims of the
20 estate and incurs no personal liability to the estate, whether
21 or not the distribution was proper. The ~~To be protected under~~
22 ~~this provision a~~ purchaser or lender need not inquire whether
23 a personal representative acted properly in making the
24 distribution in kind.

25 Section 156. Section 733.814, Florida Statutes, is
26 amended to read:

27 733.814 Partition for purpose of distribution.--When
28 two or more beneficiaries ~~heirs or devisees~~ are entitled to
29 distribution of undivided interests in any property, the
30 personal representative or any beneficiary ~~one or more of the~~
31 ~~beneficiaries~~ may petition the court before ~~closing~~ the estate

1 ~~is closed to make partition. After formal notice to the~~
2 ~~interested beneficiaries, the court shall partition the~~
3 property in the same manner as provided by law for civil
4 actions of partition. The court may direct the personal
5 representative to sell any property that cannot be partitioned
6 without prejudice to the owners and that cannot be allotted
7 equitably and conveniently ~~be allotted to any one party.~~

8 Section 157. Section 733.815, Florida Statutes, is
9 amended to read:

10 733.815 Private contracts ~~agreements~~ among interested
11 persons ~~distributees~~.--Subject to the rights of creditors and
12 taxing authorities, ~~competent~~ interested persons may agree
13 among themselves to alter the interests, shares, or amounts to
14 which they are entitled ~~under the will or under the laws of~~
15 ~~intestacy~~ in a written contract executed by them ~~all who are~~
16 ~~affected~~. The personal representative shall abide by the terms
17 of the contract ~~agreement~~, subject to the personal
18 representative's ~~his or her~~ obligation to administer the
19 estate for the benefit of interested persons who are not
20 parties to the contract, and creditors, to pay ~~all taxes and~~
21 ~~costs of administration, and to carry out the responsibilities~~
22 ~~of his or her office for the benefit of any beneficiaries of~~
23 ~~the decedent who are not parties to the agreement. Personal~~
24 ~~representatives are not required to see to the performance of~~
25 ~~trusts if the trustee is another person who is willing to~~
26 ~~accept the trust~~. Trustees of a testamentary trust are
27 interested persons ~~beneficiaries~~ for the purposes of this
28 section. Nothing in this section ~~herein~~ relieves trustees of
29 any duties owed to beneficiaries of trusts.

30 Section 158. Section 733.816, Florida Statutes, is
31 amended to read:

1 733.816 Disposition of unclaimed property held by
2 personal representatives.--

3 (1) In all cases in which there is unclaimed property
4 in the hands of a personal representative that cannot be
5 distributed or paid because of the inability to find the
6 lawful owner ~~because of inability to find him or her~~ or
7 because no lawful owner is known or because the lawful owner
8 refuses to accept the property after a reasonable attempt to
9 distribute it and after notice to that lawful owner, the court
10 shall order the personal representative to sell the property
11 and deposit the proceeds and cash already in hand, after
12 retaining those amounts provided for in subsection (4), with
13 the clerk and receive a receipt, and the clerk shall deposit
14 the funds in the registry of the court to be disposed of as
15 follows:

16 (a) If the value of the funds is \$500 or less, the
17 clerk shall post a notice for 30 days at the courthouse door
18 giving the amount involved, the name of the personal
19 representative, and the other pertinent information that will
20 put interested persons on notice.

21 (b) If the value of the funds is over \$500, the clerk
22 shall publish the notice once a month for 2 consecutive months
23 in a newspaper of general circulation in the county.

24
25 After the expiration of 6 months from the posting or first
26 publication, the clerk shall deposit the funds with the State
27 Treasurer after deducting the clerk's ~~his or her~~ fees and the
28 costs of publication.

29 (2) Upon receipt of the funds, the State Treasurer
30 shall deposit them to the credit of the State School Fund, to
31 become a part of the school fund. All interest and all income

1 that may accrue from the money while so deposited shall belong
2 to the fund. The funds so deposited shall constitute and be a
3 permanent appropriation for payments by the State Treasurer in
4 obedience to court orders entered as provided by subsection
5 (3).

6 (3) Within 10 years from the date of deposit with the
7 State Treasurer, on written petition to the court that
8 directed the deposit of the funds and informal notice to the
9 Department of Legal Affairs, and after proof of entitlement
10 ~~his or her right to them~~, any person entitled to the funds
11 before or after payment to the State Treasurer and deposit as
12 provided by subsection (1) may obtain a court ~~an order of~~
13 ~~court~~ directing the payment of the funds to that person ~~him or~~
14 ~~her~~. All funds deposited with the State Treasurer and not
15 claimed within 10 years from the date of deposit shall escheat
16 to the state for the benefit of the State School Fund.

17 (4) The personal representative depositing assets with
18 the clerk is permitted to retain from the funds ~~in his or her~~
19 ~~possession~~ a sufficient amount to pay final costs of
20 administration chargeable to the assets, ~~including fees~~
21 ~~allowed pursuant to s. 733.617~~ accruing between the deposit of
22 the funds with the clerk of the court and the order of
23 discharge. Any funds so retained which are surplus shall be
24 deposited with the clerk prior to discharge of the personal
25 representative.

26 (5)(a) If a person entitled to the funds assigns the
27 right ~~his or her rights~~ to receive payment or part payment to
28 an attorney or private investigative agency which is duly
29 licensed to do business in this state pursuant to a written
30 agreement with that ~~such~~ person, the Department of Banking and
31

1 Finance is authorized to make distribution in accordance with
2 the such assignment.

3 (b) Payments made to an attorney or private
4 investigative agency shall be promptly deposited into a trust
5 or escrow account which is regularly maintained by the
6 attorney or private investigative agency in a financial
7 institution located in this state and authorized to accept
8 these such deposits ~~and located in this state~~.

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

15 (d) The department shall not be civilly or criminally
16 liable for any funds distributed pursuant to this subsection,
17 provided the such distribution is made in good faith.

18 Section 159. Subsections (1) and (2), paragraph (a) of
19 subsection (4), paragraph (c) of subsection (5), subsection
20 (6), paragraph (a) of subsection (7), and subsection (11) of
21 section 733.817, Florida Statutes, are amended to read:

22 733.817 Apportionment of estate taxes.--

23 (1) For purposes of this section:

24 (a) "Fiduciary" means a person other than the personal
25 representative in possession of property included in the
26 measure of the tax who is liable to the applicable taxing
27 authority for payment of the entire tax to the extent of the
28 value of the property in ~~his or her~~ possession.

29 (b) "Governing instrument" means a will, trust
30 agreement, or any other document that controls the transfer of
31

1 an asset on the occurrence of the event with respect to which
2 the tax is being levied.

3 (c) "Gross estate" means the gross estate, as
4 determined by the Internal Revenue Code with respect to the
5 federal estate tax and the Florida estate tax, and as that
6 ~~such~~ concept is otherwise determined by the estate,
7 inheritance, or death tax laws of the particular state,
8 country, or political subdivision whose tax is being
9 apportioned.

10 (d) "Included in the measure of the tax" means that
11 for each separate tax that an interest may incur, only
12 interests included in the measure of that particular tax are
13 considered. The term "included in the measure of the tax" does
14 not include any interest, whether passing under the will or
15 not, to the extent the interest is initially deductible from
16 the gross estate, without regard to any subsequent reduction
17 ~~diminution~~ of the deduction by reason of the charge of any
18 part of the applicable tax to the interest. The term "included
19 in the measure of the tax" does not include interests or
20 amounts that are not included in the gross estate but are
21 included in the amount upon which the applicable tax is
22 computed, such as adjusted taxable gifts with respect to the
23 federal estate tax. If an election is required for
24 deductibility, an interest is not "initially deductible"
25 unless the election for deductibility is allowed.

26 (e) "Internal Revenue Code" means the Internal Revenue
27 Code of 1986, as amended from time to time.

28 (f) "Net tax" means the net tax payable to the
29 particular state, country, or political subdivision whose tax
30 is being apportioned, after taking into account all credits
31 against the applicable tax except as provided in this section.

1 With respect to the federal estate tax, "net tax" is
2 determined after taking into account all credits against the
3 tax except for the credit for foreign death taxes.

4 (g) "Nonresiduary devise" means any devise that is not
5 a residuary devise.

6 (h) "Nonresiduary interest" in connection with a trust
7 means any interest in a trust which is not a residuary
8 interest.

9 (i) "Recipient" means, with respect to property or an
10 interest in property included in the gross estate, an heir at
11 law in an intestate estate, devisee in a testate estate,
12 beneficiary of a trust, beneficiary of an insurance policy,
13 annuity, or other contractual right, surviving tenant, taker
14 as a result of the exercise or in default of the exercise of a
15 general power of appointment, person who receives or is to
16 receive the property or an interest in the property, or person
17 in possession of the property, other than a creditor.

18 (j) "Residuary devise" has the meaning set forth in s.
19 731.201(31)~~(30)~~.

20 (k) "Residuary interest," in connection with a trust,
21 means an interest in the assets of a trust which remain after
22 provision for any distribution that is to be satisfied by
23 reference to a specific property or type of property, fund,
24 sum, or statutory amount.

25 (l) "Revocable trust" means a trust as described in s.
26 733.707(3)~~as defined in s. 731.201(33) created by the~~
27 ~~decendent to the extent that the decedent had at his or her~~
28 ~~death the power to alter, amend, or revoke the trust either~~
29 ~~alone or in conjunction with any other person.~~

30
31

1 (m) "State" means any state, territory, or possession
2 of the United States, the District of Columbia, and the
3 Commonwealth of Puerto Rico.

4 (n) "Tax" means any estate tax, inheritance tax,
5 generation skipping transfer tax, or other tax levied or
6 assessed under the laws of this or any other state, the United
7 States, any other country, or any political subdivision of the
8 foregoing, as finally determined, which is imposed as a result
9 of the death of the decedent, including, without limitation,
10 the tax assessed pursuant to s. 4980A of the Internal Revenue
11 Code. The term also includes any interest and penalties
12 imposed in addition to the tax. Unless the context indicates
13 otherwise, the term "tax" means each separate tax.

14 (o) "Temporary interest" means an interest in income
15 or an estate for a specific period of time or for life or for
16 some other period controlled by reference to extrinsic events,
17 whether or not in trust.

18 (p) "Tentative Florida tax" with respect to any
19 property means the net Florida estate tax that would have been
20 attributable to that property if no tax were payable to any
21 other state in respect of that property.

22 (q) "Value" means the pecuniary worth of the interest
23 involved as finally determined for purposes of the applicable
24 tax after deducting any debt, expense, or other deduction
25 chargeable to it for which a deduction was allowed in
26 determining the amount of the applicable tax. A lien or other
27 encumbrance is not regarded as chargeable to a particular
28 interest to the extent that it will be paid from other
29 interests. The value of an interest shall not be reduced by
30 reason of the charge against it of any part of the tax.

31

1 (2) An interest in protected homestead ~~property~~ shall
2 be exempt from the apportionment of taxes ~~if such interest~~
3 ~~passes to a person to whom inures the decedent's exemption~~
4 ~~from forced sale under the State Constitution.~~

5 (4)(a) Except as otherwise effectively directed by the
6 governing instrument, if the Internal Revenue Code including,
7 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,
8 and 2603, ~~of the Internal Revenue Code~~ applies to apportion
9 federal tax against recipients of certain interests, all net
10 taxes, including taxes levied by the state attributable to
11 each type of interest, shall be apportioned against the
12 recipients of all interests of that type in the proportion
13 that the value of each interest of that type included in the
14 measure of the tax bears to the total of all interests of that
15 type included in the measure of the tax.

16 (5) Except as provided above or as otherwise directed
17 by the governing instrument, the net tax attributable to each
18 interest shall be apportioned as follows:

19 (c) The net tax attributable to an interest in
20 protected homestead ~~property which is exempt from~~
21 ~~apportionment pursuant to subsection (2)~~ shall be apportioned
22 against the recipients of other interests in the estate or
23 passing under any revocable trust in the following order:

24 1. Class I: Recipients of interests not disposed of
25 by the decedent's will or revocable trust that ~~which~~ are
26 included in the measure of the federal estate tax.

27 2. Class II: Recipients of residuary devises and
28 residuary interests that are included in the measure of the
29 federal estate tax.

30 3. Class III: Recipients of nonresiduary devises and
31 nonresiduary interests that are included in the measure of the

1 federal estate tax. The net tax apportioned to a class, if
2 any, pursuant to this paragraph shall be apportioned among the
3 recipients in the class in the proportion that the value of
4 the interest of each bears to the total value of all interests
5 included in that class.

6 (6) The personal representative or fiduciary shall not
7 be required to transfer to a recipient any property in
8 ~~possession of the personal representative or fiduciary which~~
9 ~~he or she reasonably anticipated to anticipate~~ may be
10 necessary for the payment of taxes. Further, the personal
11 representative or fiduciary shall not be required to transfer
12 any property in ~~possession of the personal representative or~~
13 ~~fiduciary~~ to the recipient until the amount of the tax due
14 from the recipient is paid by the recipient. If property is
15 transferred before final apportionment of the tax, the
16 recipient shall provide a bond or other security for his or
17 her apportioned liability in the amount and form prescribed by
18 the personal representative or fiduciary.

19 (7)(a) The personal representative may petition at any
20 time for an order of apportionment. If no administration has
21 been commenced at any time after 90 days from the decedent's
22 death any fiduciary may petition for an order of apportionment
23 in the court in which venue would be proper for administration
24 of the decedent's estate. Formal notice of the petition for
25 order of apportionment shall be given to all interested
26 persons. At any time after 6 months from the decedent's death,
27 any recipient may petition the ~~such~~ court for an order of
28 apportionment.

29 (11) Nothing in this section shall limit the right of
30 any person who has paid more than the amount of the tax
31 apportionable to that ~~such~~ person, calculated as if all

1 apporportioned amounts would be collected, to obtain contribution
2 from those who have not paid the full amount of the tax
3 apporportionable to them, calculated as if all apporportioned
4 amounts would be collected, and that right is hereby
5 conferred. In any action to enforce contribution, the court
6 shall award taxable costs as in chancery actions, including
7 reasonable attorney's fees.

8 Section 160. Section 733.901, Florida Statutes, is
9 amended to read:

10 733.901 ~~Distribution~~Final discharge.--

11 (1) After administration has been ~~When a personal~~
12 ~~representative has completed~~ the personal representative shall
13 be discharged ~~administration except for distribution, he or~~
14 ~~she shall file a final accounting and a petition for discharge~~
15 ~~that shall contain:~~

16 (a) ~~A complete report of all receipts and~~
17 ~~disbursements since the date of the last annual accounting or,~~
18 ~~if none, from the commencement of administration.~~

19 (b) ~~A statement that he or she has fully administered~~
20 ~~the estate by making payment, settlement, or other disposition~~
21 ~~of all claims and debts that were presented and the expenses~~
22 ~~of administration.~~

23 (c) ~~The proposed distribution of the assets of the~~
24 ~~estate.~~

25 (d) ~~Any prior distributions that have been made.~~

26 (e) ~~A statement that objections to this report or~~
27 ~~proposed distribution of assets be filed within 30 days.~~

28
29 ~~The final accounting and petition for discharge shall be filed~~
30 ~~and served on all interested persons within 12 months after~~
31 ~~issuance of letters for estates not required to file a federal~~

1 ~~estate tax return, otherwise 12 months from the date the~~
2 ~~return is due, unless the time is extended by the court for~~
3 ~~cause shown after notice to interested persons. The petition~~
4 ~~shall state the status of the estate and the reasons for the~~
5 ~~extension.~~

6 ~~(2) If no objection to the accounting or petition for~~
7 ~~discharge has been filed within 30 days from the date of~~
8 ~~service of copies on interested persons, or if service has~~
9 ~~been waived, the personal representative may distribute the~~
10 ~~estate according to the plan of distribution set forth in the~~
11 ~~petition without a court order. The assets shall be~~
12 ~~distributed free from the claims of any interested person and,~~
13 ~~upon receipt of evidence that the estate has been properly~~
14 ~~distributed and that claims of creditors have been paid or~~
15 ~~otherwise disposed of, the court shall enter an order~~
16 ~~discharging the personal representative and releasing the~~
17 ~~surety on any bond.~~

18 ~~(3) If an objection to the petition for discharge has~~
19 ~~been filed within the time allowed, the court shall determine~~
20 ~~the plan of distribution and, upon receipt of evidence that~~
21 ~~the estate has been properly distributed and that claims of~~
22 ~~creditors have been paid or otherwise disposed of, the court~~
23 ~~shall enter an order discharging the personal representative~~
24 ~~and releasing the surety on any bond.~~

25 ~~(4) The final accounting required under subsection (1)~~
26 ~~may be waived upon a filing of a consent waiver with the~~
27 ~~court, by all interested persons, acknowledging that they are~~
28 ~~aware of their rights and that they waive the right to have a~~
29 ~~final accounting.~~

30 ~~(5) The 30-day period contained in subsection (2) may~~
31 ~~be waived upon written consent of all interested persons.~~

1 (2)~~(6)~~ The discharge of the personal representative
2 shall release the personal representative ~~of the estate~~ and
3 shall bar any action against the personal representative, as
4 such or individually, and the ~~his or her~~ surety.

5 Section 161. Section 733.903, Florida Statutes, is
6 amended to read:

7 733.903 Subsequent administration.--The final
8 settlement of an estate and the discharge of the personal
9 representative shall not prevent ~~a revocation of the order of~~
10 ~~discharge or the subsequent issuance of letters if other~~
11 ~~property of the estate is discovered or if it becomes~~
12 ~~necessary that further administration of the estate be had for~~
13 ~~any cause. However,~~The order of discharge may not be revoked
14 ~~under this section~~ based upon the discovery of a will or later
15 will.

16 Section 162. Subsections (3) and (4) of section
17 734.101, Florida Statutes, are amended to read:

18 734.101 Foreign personal representative.--

19 (3) Debtors who have not received a written demand for
20 payment from a personal representative or curator appointed in
21 this state within 60 days after appointment of a personal
22 representative in any other state or country, and whose
23 property in Florida is subject to a mortgage or other lien
24 securing the debt held by the foreign personal representative,
25 may pay the foreign personal representative after the
26 expiration of 60 days from the date of ~~his or her~~ appointment
27 of the foreign personnel representative. Thereafter, a
28 satisfaction of the mortgage or lien executed by the foreign
29 personal representative, with an authenticated copy of the his
30 ~~or her~~ letters or other evidence of authority attached, may be
31 recorded in the public records. The satisfaction shall be an

1 effective discharge of the mortgage or lien, irrespective of
2 whether the debtor making payment had received a written
3 demand before paying the debt.

4 (4) All persons indebted to the estate of a decedent,
5 or having possession of personal property belonging to the
6 estate, who have received no written demand from a personal
7 representative or curator appointed in this state for payment
8 of the debt or the delivery of the property are authorized to
9 pay the debt or to deliver the personal property to the
10 foreign personal representative after the expiration of 60
11 days from the date of ~~his or her~~ appointment of the foreign
12 personnel representative.

13 Section 163. Section 734.102, Florida Statutes, is
14 amended to read:

15 734.102 Ancillary administration.--

16 (1) If a nonresident of this state dies leaving assets
17 in this state, credits due ~~him or her~~ from residents in this
18 state, or liens on property in this state, a personal
19 representative specifically designated in the decedent's will
20 to administer the Florida property shall be entitled to have
21 ancillary letters issued ~~to him or her~~, if qualified to act in
22 Florida. Otherwise, the foreign personal representative of the
23 decedent's estate shall be entitled to have letters issued ~~to~~
24 ~~him or her~~, if qualified to act in Florida. If the foreign
25 personal representative is not qualified to act in Florida and
26 the will names an alternate or successor who is qualified to
27 act in Florida, the alternate or successor shall be entitled
28 to have letters issued ~~to him or her~~. Otherwise, those
29 entitled to a majority interest of the Florida property may
30 have letters issued to a personal representative selected by
31 them who is qualified to act in Florida. If the decedent dies

1 intestate and the foreign ~~domiciliary~~ personal representative
2 is not qualified to act in Florida, the order of preference
3 for appointment of a personal representative as prescribed in
4 this code shall apply. If ancillary letters are applied for
5 by other than the domiciliary personal representative, prior
6 notice shall be given to any domiciliary personal
7 representative.

8 (2) Ancillary administration shall be commenced as
9 provided by the Florida Probate Rules. ~~To entitle the~~
10 ~~applicant to ancillary letters, an authenticated copy of so~~
11 ~~much of the domiciliary proceedings shall be filed as will~~
12 ~~show either:~~

13 ~~(a) The will, petition for probate, order admitting~~
14 ~~the will to probate, and letters, if there are such; or~~

15 ~~(b) The petition for letters and the letters.~~

16 (3) ~~On filing the authenticated copy of a probated~~
17 ~~will, including any probated codicils, the court shall~~
18 ~~determine~~ If the will and any the codicils are executed as
19 required by the code, they shall be admitted to probate if
20 any, comply with s. 732.502(1) or s. 732.502(2). ~~If they~~
21 ~~comply, the court shall admit the will and any codicils to~~
22 ~~record.~~

23 (4) The ancillary personal representative shall give
24 bond as do personal representatives generally. All
25 proceedings for appointment and administration of the estate
26 shall be as similar to those in original administrations as
27 possible.

28 (5) Unless creditors' claims are otherwise barred by
29 s. 733.710, the ancillary personal representative shall cause
30 a notice to creditors to be served and published according to
31 the requirements of chapter 733. Claims not filed in

1 accordance with chapter 733 shall be barred as provided in s.
2 733.702.

3 (6)~~(5)~~ After the payment of all expenses of
4 administration and claims against the estate, the court may
5 order the remaining property held by the ancillary personal
6 representative transferred to the foreign domiciliary personal
7 representative or distributed to the beneficiaries ~~heirs or~~
8 ~~devisees.~~

9 (7)~~(6)~~ Ancillary personal representatives shall have
10 the same rights, powers, and authority as other personal
11 representatives in Florida to manage and settle estates; to
12 sell, lease, or mortgage local property; and to raise funds
13 for the payment of debts, claims, and devises in the
14 domiciliary jurisdiction. No property shall be sold, leased,
15 or mortgaged to pay a debt or claim that is barred by any
16 statute of limitation or of nonclaim of this state.

17 Section 164. Section 734.1025, Florida Statutes, is
18 amended to read:

19 734.1025 Nonresident decedent's testate estate with
20 property not exceeding ~~\$50,000~~\$25,000 in this state;
21 determination of claims.--

22 (1) When a nonresident decedent dies testate and
23 leaves property subject to administration in this state the
24 gross value of which does not exceed \$50,000 at the date of
25 death~~\$25,000~~, the foreign domiciliary personal representative
26 of the estate ~~may determine the question of claims in this~~
27 ~~state~~ before the expiration of 2 years after the decedent's
28 death may file ~~the 2-year period provided in s. 733.710 by~~
29 filing in the circuit court of the county where any property
30 is located an authenticated transcript of so much of the
31 foreign domiciliary proceedings as will show the will and

1 beneficiaries of the estate, as provided in the Florida
2 Probate Rules. The court shall admit the will and any codicils
3 to probate if they comply with s. 732.502(1) or (2).+

4 ~~(a) In a testate estate, the probated will and all~~
5 ~~probated codicils of the decedent; the order admitting them to~~
6 ~~record; the letters or their equivalent; and the part of the~~
7 ~~record showing the names of the devisees and heirs of the~~
8 ~~decedent or an affidavit of the domiciliary personal~~
9 ~~representative reciting that the names are not shown or not~~
10 ~~fully disclosed by the domiciliary record and specifying the~~
11 ~~names. On presentation of the foregoing, the court shall~~
12 ~~admit the will and any codicils to probate if they comply with~~
13 ~~s. 732.502(1) or (2).~~

14 ~~(b) In an intestate estate, the authenticated copy of~~
15 ~~letters of administration, or their equivalent, with the part~~
16 ~~of the record showing the names of the heirs of the decedent~~
17 ~~or an affidavit of the domiciliary personal representative~~
18 ~~supplying the names, as provided in paragraph (a). On~~
19 ~~presentation of the foregoing, the court shall order them~~
20 ~~recorded.~~

21 ~~(2) After complying with the foregoing requirements,~~
22 ~~The foreign domiciliary personal representative may shall~~
23 ~~cause a notice to creditors to be served and published~~
24 ~~according to the revelant requirements of chapter 733 s-~~
25 ~~731.111, notifying all persons having claims or demands~~
26 ~~against the estate to file them. Claims not filed in~~
27 ~~accordance with chapter 733 shall be barred as provided in s.~~
28 ~~733.702. If any claim is filed, a personal representative~~
29 ~~shall be appointed as provided in the Florida Probate Rules.~~

30
31

1 ~~(3) The procedure for filing claims and objection to~~
2 ~~them and for suing on them shall be the same as for other~~
3 ~~estates, except as hereinafter provided.~~

4 ~~(4) If no claims are filed against the estate within~~
5 ~~the time allowed, the court shall enter an order adjudging~~
6 ~~that notice to creditors has been duly given and proof thereof~~
7 ~~filed and that no claims have been filed against the estate or~~
8 ~~that all claims have been satisfied.~~

9 ~~(5) If any claim is filed against the estate within~~
10 ~~the time allowed, the court shall send to the domiciliary~~
11 ~~personal representative a copy of the claim and a notice~~
12 ~~setting a date for a hearing to appoint an ancillary personal~~
13 ~~representative. At the hearing, the court shall appoint an~~
14 ~~ancillary personal representative according to the preferences~~
15 ~~as provided in s. 733.301.~~

16 ~~(6) If an ancillary personal representative is~~
17 ~~appointed pursuant to subsection (5), the procedure for~~
18 ~~filing, objecting to, and suing on claims shall be the same as~~
19 ~~for other estates, except that the ancillary personal~~
20 ~~representative appointed shall have not fewer than 30 days~~
21 ~~from the date of his or her appointment within which to object~~
22 ~~to any claim filed.~~

23 ~~(7) The filing by domiciliary personal representatives~~
24 ~~of portions of the domiciliary probate proceedings as~~
25 ~~specified in this section, and the barring of claims of~~
26 ~~creditors in such estates by the publication of notice to~~
27 ~~creditors as set forth in this section, in all cases prior to~~
28 ~~June 25, 1980, are hereby validated and confirmed.~~

29 Section 165. Subsections (1) and (3) of section
30 734.104, Florida Statutes, are amended to read:

31

1 734.104 Foreign wills; admission to record; effect on
2 title.--

3 (1) An authenticated copy of the will of a nonresident
4 that devises real property in this state, or any right, title,
5 or interest in the property, may be admitted to record in any
6 county of this state where the property is located at any time
7 after 2 years from the death of the decedent or at any time
8 after the domiciliary personal representative has been
9 discharged if there has been no proceeding to administer the
10 estate of the decedent in this state, provided:

11 (a) The will was executed as required by Chapter 732
12 ~~complies with s. 732.502 as to form and manner of execution;~~
13 and

14 (b) The will has been admitted to probate in the
15 proper court of any other state, territory, or country.

16 (3) If the court finds that the requirements of this
17 section have been met ~~has been complied with~~, it shall enter
18 an order admitting the foreign will to record.

19 Section 166. Section 734.201, Florida Statutes, is
20 amended to read:

21 734.201 Jurisdiction by act of foreign personal
22 representative.--A foreign personal representative submits
23 personally to the jurisdiction of the courts of this state in
24 any proceeding concerning the estate by:

25 (1) Filing authenticated copies of the domiciliary
26 proceedings under s. 734.104; ~~734.103~~.

27 (2) Receiving payment of money or taking delivery of
28 personal property, under s. 734.101; ~~or~~

29 (3) Doing any act as a personal representative in this
30 state that would have given the state jurisdiction over that
31 person ~~him or her~~ as an individual.

1 Section 167. Section 734.202, Florida Statutes, is
2 amended to read:

3 734.202 Jurisdiction by act of decedent.--In addition
4 to jurisdiction conferred by s. 734.201, a foreign personal
5 representative is subject to the jurisdiction of the courts of
6 this state to the same extent that the ~~his or her~~ decedent was
7 subject to jurisdiction immediately before death.

8 Section 168. Section 735.101, Florida Statutes, is
9 repealed.

10 Section 169. Section 735.103, Florida Statutes, is
11 repealed.

12 Section 170. Section 735.107, Florida Statutes, is
13 repealed.

14 Section 171. Subsection (2) of section 735.201,
15 Florida Statutes, is amended to read:

16 735.201 Summary administration; nature of
17 proceedings.--Summary administration may be had in the
18 administration of either a resident or nonresident decedent's
19 estate, when it appears:

20 (2) That the value of the entire estate subject to
21 administration in this state, less the value of property
22 exempt from the claims of creditors, does not exceed \$50,000
23 ~~\$25,000~~ or that the decedent has been dead for more than 2
24 years.

25 Section 172. Section 735.203, Florida Statutes, is
26 amended to read:

27 735.203 Petition for summary administration.--

28 (1) A petition for summary administration may be filed
29 by any beneficiary, ~~heir at law,~~ or person nominated as
30 personal representative in the decedent's will offered for
31

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 of the heirs~~
4 ~~at 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; or
12 (b) The guardian of an incapacitated person or a
13 minor.
14 The grantee or transferee of any of them is authorized to sign
15 and verify the petition instead of the beneficiary or
16 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
31

1 ~~(b) A complete list of the assets of the estate and~~
2 ~~their estimated value, together with those assets claimed to~~
3 ~~be exempt.~~

4 ~~(c) A statement that the estate is not indebted or~~
5 ~~that provision for payment of debts has been made.~~

6 ~~(d) A proposed schedule of distribution of all assets~~
7 ~~to those entitled thereto as surviving spouse, beneficiaries,~~
8 ~~or creditors.~~

9 Section 173. Section 735.206, Florida Statutes, is
10 amended to read:

11 735.206 Summary administration distribution.--

12 (1) Upon the filing of the petition for summary
13 administration, the will, if any, shall be proved in
14 accordance with chapter 733 and be admitted to probate.

15 (2) Prior to entry of the order of summary
16 administration, the petitioner shall make a diligent search
17 and reasonable inquiry for any known or reasonably
18 ascertainable creditors, serve a copy of the petition on those
19 creditors, and make provision for payment for those creditors
20 to the extent that assets are available.

21 ~~(3)(2) The court may enter After such hearing as the~~
22 ~~court may require, an order of summary administration may be~~
23 ~~entered~~ allowing immediate distribution of the assets to the
24 persons entitled to them.

25 ~~(4)(3)~~ The order of summary administration and
26 distribution so entered shall have the following effect:

27 (a) Those to whom specified parts of the decedent's
28 estate, including exempt property, are assigned by the order
29 shall be entitled to receive and collect the parts and to have
30 the parts transferred to them. They may maintain actions to
31 enforce the right.

1 (b) Debtors of the decedent, those holding property of
2 the decedent, and those with whom securities or other property
3 of the decedent are registered are authorized and empowered to
4 comply with the order by paying, delivering, or transferring
5 to those specified in the order the parts of the decedent's
6 estate assigned to them by the order, and the persons so
7 paying, delivering, or transferring shall not be accountable
8 to anyone else for the property.

9 (c) After the entry of the order, bona fide purchasers
10 for value from those to whom property of the decedent may be
11 assigned by the order shall take the property free of all
12 claims of creditors of the decedent and all rights of the
13 surviving spouse and all other beneficiaries ~~heirs and~~
14 ~~devisees~~.

15 (d) Property of the decedent that is not exempt from
16 claims of creditors and that remains in the hands of those to
17 whom it may be assigned by the order shall continue to be
18 liable for claims against the decedent until barred as
19 provided in the code this law. Any known or reasonably
20 ascertainable creditor who did not receive notice and for whom
21 provision for payment was not made may enforce the claim and,
22 if the creditor prevails, shall be awarded reasonable
23 attorney's fees as an element of costs against those who
24 joined in the petition.

25 (e) The recipients of the decedent's property under
26 ~~petitioners for~~ the order of summary administration shall be
27 personally liable for a pro rata share of all lawful claims
28 against the estate of the decedent, but only to the extent of
29 the value of the estate of the decedent actually received by
30 each recipient ~~petitioner~~, exclusive of the property exempt
31

1 from claims of creditors under the constitution and statutes
2 of Florida.

3 (f) After 2 years from the death of the decedent,
4 neither the decedent's estate nor those to whom it may be
5 assigned shall be liable for any claim against the decedent,
6 unless proceedings have been taken for the enforcement of the
7 claim.

8 (g) 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 summary administration and
11 distribution may enforce all ~~his or her~~ rights in appropriate
12 proceedings against those who procured the order and, if ~~when~~
13 successful, shall be awarded reasonable attorney's fees as an
14 element of costs.

15 Section 174. Section 735.2063, Florida Statutes, is
16 amended to read:

17 735.2063 Notice to creditors.--

18 (1) Any person who has obtained ~~received~~ an order of
19 summary administration may publish a notice to creditors
20 according to the relevant requirements of s. 733.2121 ~~731.111~~,
21 notifying all persons having claims or demands against the
22 estate of the decedent that an order of summary administration
23 has been entered by the court. The ~~Such~~ notice shall ~~will~~
24 specify the total ~~cash~~ value of the estate and the names and
25 addresses of those to whom it has been assigned by the ~~such~~
26 order. ~~Such notice, if published, shall be published once a~~
27 ~~week for 2 consecutive weeks in a newspaper published in the~~
28 ~~county where such order was entered, and proof of publication~~
29 ~~of such notice shall be filed with the court.~~

30 (2) If proof of publication of the ~~such~~ notice is
31 filed with the court, all claims and demands of creditors

1 against the estate of the decedent who are not known or are
2 reasonably ascertainable shall be forever barred unless the
3 ~~such~~ claims and demands are filed with the court within 3
4 months after ~~from~~ the first publication of the ~~such~~ notice.

5 Section 175. Section 735.209, Florida Statutes, is
6 repealed.

7 Section 176. Subsection (3) of section 735.301,
8 Florida Statutes, is amended to read:

9 735.301 Disposition without administration.--

10 (3) Any person, firm, or corporation paying,
11 delivering, or transferring property under the authorization
12 shall be forever discharged from ~~any~~ liability thereon.

13 Section 177. Section 735.302, Florida Statutes, is
14 amended to read:

15 735.302 Income tax refunds in certain cases.--

16 (1) In any case when the United States Treasury
17 Department determines that an overpayment of federal income
18 tax exists and the person in whose favor the overpayment is
19 determined is dead at the time the overpayment of tax is to be
20 refunded, and irrespective of whether the decedent had filed a
21 joint and several or separate income tax return, the amount of
22 the overpayment, if not in excess of \$2,500~~\$500~~, may be
23 refunded as follows:

24 (a) Directly to the surviving spouse on his or her
25 verified application; or

26 (b) If there is no surviving spouse, to one of the
27 decedent's children who is designated in a verified
28 application purporting to be executed by all of the decedent's
29 children over the age of 14 years.

30
31

1 In either event, the application must show that the decedent
2 was not indebted, that provision has been made for the payment
3 of the decedent's debts, or that the entire estate is exempt
4 from the claims of creditors under the constitution and
5 statutes of the state, and that no administration of the
6 estate, including summary administration, has been initiated
7 and that none is planned, to the knowledge of the applicant.

8 (2) If a refund is made to the surviving spouse or
9 designated child pursuant to the application, the refund shall
10 operate as a complete discharge to the United States from
11 liability from any action, claim, or demand by any beneficiary
12 of the decedent or other person. ~~Nothing in~~ This section
13 shall be construed as establishing the ownership or rights of
14 the payee ~~any person~~ in the refund ~~so distributed~~.

15 Section 178. Section 737.3054, Florida Statutes, is
16 amended to read:

17 737.3054 Trustee's duty to pay expenses and
18 obligations of grantor's ~~settlor's~~ estate.--

19 (1) A trustee of a trust described in s. 733.707(3)
20 shall pay to the personal representative of a grantor's
21 ~~settlor's~~ estate any amounts that the personal representative
22 certifies in writing to the trustee are required to pay the
23 expenses of the administration and obligations of the
24 grantor's ~~settlor's~~ estate ~~and the enforceable claims of the~~
25 ~~settlor's creditors~~. Payments made by a trustee, unless
26 otherwise provided in the trust instrument, must be charged as
27 expenses of the trust without a contribution from anyone. The
28 interests ~~interest~~ of all beneficiaries of such a trust are
29 subject to the provisions of this subsection; however, the
30 payments must be made from assets or property or the proceeds
31 thereof, other than assets proscribed in s. 733.707(3), which

1 are included in the grantor's ~~settlor's~~ gross estate for
2 federal estate tax purposes.

3 (2) Unless a grantor ~~settlor~~ provides by will, or
4 designates in a trust described in s. 733.707(3) ~~the~~ funds or
5 property passing under the ~~a trust described in s. 733.707(3)~~
6 to be so used, the expenses of the administration and
7 obligations of the grantor's ~~settlor's~~ estate ~~and enforceable~~
8 ~~claims of the settlor's creditors~~ must be paid from the trust
9 in the following order:

10 (a) Property of the residue of the trust remaining
11 after all distributions that are to be satisfied by reference
12 to a specific property or type of property, fund, or sum;

13 (b) Property that is not to be distributed from
14 specified or identified property or a specified or identified
15 item of property; and

16 (c) Property that is to be distributed from specified
17 or identified property or a specified or identified item of
18 property.

19 (3) Trust distributions that are to be satisfied from
20 specified or identified property must be classed as
21 distributions to be satisfied from the general assets of the
22 trust and not otherwise disposed of in the trust instrument
23 upon the failure or insufficiency of funds or property from
24 which payment should be made, to the extent of the
25 insufficiency. Trust distributions given for valuable
26 consideration abate with other distributions of the same class
27 only to the extent of the excess over the value of the
28 consideration until all others of the same class are
29 exhausted. Except as provided in this section, trust
30 distributions abate equally and ratably and without preference
31 or priority between real and personal property. When a

1 specified or identified item of property that has been
2 designated for distribution in the trust instrument or that is
3 charged with a distribution is sold or taken by the trustee,
4 other beneficiaries shall contribute according to their
5 respective interests to the beneficiary whose property has
6 been sold or taken, and before distribution the trustee shall
7 determine the amounts of the respective contributions, and
8 they must be paid or withheld before distribution is made.

9 (4) The trustee shall pay the expenses of trust
10 administration, including compensation of trustees and their
11 attorneys, before and in preference to the expenses of the
12 administration and obligations of the grantor's ~~settlor's~~
13 estate ~~and enforceable claims of the settlor's creditors.~~

14 Section 179. Section 737.306, Florida Statutes, is
15 amended to read:

16 737.306 Personal liability of trustee.--

17 (1)(a) Unless otherwise provided in the contract, a
18 trustee is not personally liable on contracts, except
19 contracts for attorneys' fees, properly entered into in the
20 trustee's fiduciary capacity in the course of administration
21 of the trust estate unless the trustee ~~he or she~~ fails to
22 reveal that ~~his or her~~ representative capacity and identify
23 the trust estate in the contract.

24 (b) A trustee is personally liable for obligations
25 arising from ownership or control of property of the trust
26 estate or for torts committed in the course of administration
27 of the trust estate only if the trustee is personally at
28 fault.

29 (c) Claims based on contracts, except contracts for
30 attorneys' fees, entered into by a trustee in his or her
31 fiduciary capacity, on obligations arising from ownership or

1 control of the trust estate, or on torts committed in the
2 course of trust administration may be asserted against the
3 trust estate by proceeding against the trustee in the
4 trustee's ~~his or her~~ fiduciary capacity, whether or not the
5 trustee is personally liable.

6 (2) Issues of liability between the trust estate and
7 the trustee individually may be determined in a proceeding for
8 accounting, surcharge, or indemnification, or in any other
9 appropriate proceeding.

10 (3) A successor trustee is not personally liable for
11 any action taken or omitted to be taken by any prior trustee;
12 nor does any successor trustee have a duty to institute any
13 action against any prior trustee, or file any claim against
14 any prior trustee's estate, for any of the prior trustee's
15 acts or omissions as trustee under any of the following
16 circumstances:

17 (a) The successor trustee succeeds a trustee who was
18 also the grantor of a trust that was revocable during the time
19 that the grantor served as trustee;

20 (b) As to any beneficiary who has waived any
21 accounting required by s. 737.303, but only as to the periods
22 included in the ~~such~~ waiver;

23 (c) As to any beneficiary who has released the
24 successor trustee from the ~~such~~ duty to institute any action
25 or file any claim;

26 (d) As to any person who is not a beneficiary within
27 the meaning of s. 737.303(4)(b); or

28 (e) As to any beneficiary described in s.
29 737.303(4)(b):

30 1. If a super majority of the reasonably ascertainable
31 current income or principal beneficiaries described in s.

1 737.303(4)(b)1. and a super majority of the reasonably
2 ascertainable remainder beneficiaries described in s.
3 737.303(4)(b)2. have released the successor trustee;
4 2. If the beneficiary has not delivered a written
5 request to the successor trustee to institute an action or
6 file a claim against the prior trustee within 6 months after
7 the date of the successor trustee's acceptance of the trust,
8 if the successor trustee has notified the beneficiary in
9 writing of its acceptance in accordance with s. 737.303(1) and
10 that ~~such~~ writing advises the beneficiary that, unless the
11 beneficiary delivers the ~~such~~ written request within 6 months
12 after the date of acceptance, the ~~his or her~~ right to proceed
13 against the successor trustee will be barred pursuant to this
14 section; or
15 3. For any action or claim that the beneficiary is
16 barred from bringing against the prior trustee.
17 ~~(4)(a) Two years after the death of a settlor, neither~~
18 ~~a trust described in s. 733.707(3) as established by the~~
19 ~~settlor, the trustee of the trust, nor any beneficiary may be~~
20 ~~held liable for any claim or cause of action against the~~
21 ~~settlor by a creditor who seeks to recover from the trust,~~
22 ~~trustee, or beneficiary.~~
23 ~~(b) This subsection does not apply to a creditor who~~
24 ~~has timely filed a claim against the settlor's estate under s.~~
25 ~~733.702 within 2 years after the settlor's death and whose~~
26 ~~claim has not been paid or otherwise disposed of, even if the~~
27 ~~settlor's estate proceedings have been closed or otherwise~~
28 ~~completed.~~
29 ~~(c) This subsection does not affect the lien of a duly~~
30 ~~recorded mortgage or security interest or the right to~~
31 ~~foreclose and enforce the mortgage or lien.~~

1 ~~(f)(5)~~ For the purposes of this section, a super
2 majority of beneficiaries means at least two-thirds in
3 interest of the beneficiaries if the interests of the
4 beneficiaries are reasonably ascertainable; otherwise, it
5 means at least two-thirds in number of the beneficiaries. A
6 release or waiver under this section may be exercised by a
7 legal representative or natural guardian of the beneficiary
8 without the filing of any proceeding or approval of any court.
9 Nothing in this subsection~~(3)~~ affects any liability of the
10 prior trustee or the right of the successor trustee or any
11 beneficiary to pursue an action or claim against the prior
12 trustee.

13 Section 180. Section 737.3061, Florida Statutes, is
14 created to read:

15 737.3061 Limitations on actions against certain
16 trusts.--

17 (1) After the death of a grantor, no creditor of the
18 grantor may bring, maintain, or continue any direct action
19 against a trust described in s. 733.707(3), the trustee of the
20 trust, or any beneficiary of the trust which is dependent on
21 the individual liability of the grantor. Those claims and
22 causes of action against the grantor shall be presented and
23 enforced against the grantor's estate as provided in part VII
24 of chapter 733, and the personal representative of the
25 grantor's estate may obtain payment from the trustee of a
26 trust described in s. 733.707(3) as provided in ss.
27 733.607(2), 733.707(3), and 737.3054(1).

28 (2) This section shall not preclude a direct action
29 against a trust described in s. 733.707(3), the trustee of the
30 trust, or a beneficiary of the trust which is not dependent on
31 the individual liability of the grantor.

1 (3) This section does not affect the lien of any duly
2 recorded mortgage or security interest or the lien of any
3 person in possession of personal property or the right to
4 foreclose and enforce the mortgage or lien.

5 Section 181. Section 737.308, Florida Statutes, is
6 amended to read:

7 737.308 Notice of trust.--

8 (1) Upon the death of a settlor of a trust described
9 in s. 733.707(3), the trustee must file a notice of trust with
10 the court of the county of the settlor's domicile and the
11 court having jurisdiction of the settlor's estate.

12 (2) The notice of trust must contain the name of the
13 settlor, the settlor's date of death, the title of the trust,
14 if any, the date of the trust, and the name and address of the
15 trustee.

16 (3) If the settlor's probate proceeding has been
17 commenced, the clerk must notify the trustee in writing of the
18 date of the commencement of the probate proceeding and the
19 file number.

20 (4) The clerk shall file and index the notice of trust
21 in the same manner as a caveat, unless there exists a probate
22 proceeding for the settlor's estate in which case the notice
23 of trust must be filed in the probate proceeding and the clerk
24 shall send a copy to the personal representative.

25 (5) The clerk shall send a copy of any caveat filed
26 regarding the settlor to the trustee, and the Notice of Trust
27 to any caveator, unless there is a probate proceeding pending
28 and the personal representative and the trustee are the same.

29 ~~(6) In any proceeding affecting the expenses of the~~
30 ~~administration of the estate, or any claims described in s.~~
31 ~~733.702(1), the trustee of a trust described in s. 733.707(3)~~

1 ~~is an interested person in the administration of the grantor's~~
2 ~~estate.~~

3 (6)~~(7)~~ Any proceeding affecting the expenses of the
4 administration or obligations of the grantor's estate ~~or any~~
5 ~~claims described in s. 733.702(1)~~ prior to the trustee filing
6 a notice of trust are binding upon the trustee.

7 (7)~~(8)~~ The trustee's failure to file the notice of
8 trust does not affect the trustee's obligation to pay expenses
9 of administration and obligations of the grantor's estate
10 ~~enforceable claims~~ as provided in s. 733.607(2).

11 Section 182. Section 215.965, Florida Statutes, is
12 amended to read:

13 215.965 Disbursement of state moneys.--Except as
14 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.
15 717.124(5), s. 732.107(5)~~(6)~~, or s. 733.816(5), all moneys in
16 the State Treasury shall be disbursed by state warrant, drawn
17 by the Comptroller upon the State Treasury and payable to the
18 ultimate beneficiary. This authorization shall include
19 electronic disbursement.

20 Section 183. Subsection (3) of section 660.46, Florida
21 Statutes, is amended to read:

22 660.46 Substitution of fiduciaries.--

23 (3) Unless a waiver or consent shall be filed in the
24 proceedings as provided in subsection (4), the provisions of
25 s. 731.301(1)~~(a)~~, ~~(c)~~, and (2)~~(d)~~ shall apply with respect to
26 notice of the proceedings to all persons who are then
27 cofiduciaries with the original fiduciary, other than a person
28 joining as a petitioner in the proceedings; to all persons
29 named in the governing instrument as substitutes or successors
30 to the fiduciary capacity of the original fiduciary; to the
31 persons then living who are entitled under the governing

1 instrument to appoint a substitute or successor to act in the
2 fiduciary capacity of the original fiduciary; to all vested
3 beneficiaries of the fiduciary account; and to all then-living
4 originators of the governing instrument. Unless a waiver or
5 consent shall be filed in the proceedings as provided in
6 subsection (4), the provisions of s. 731.301~~(2)~~ shall apply
7 with respect to notice to all contingent beneficiaries of the
8 fiduciary account. Only the persons or classes of persons
9 described in the foregoing provisions of this subsection shall
10 be deemed to be interested persons for the purposes of this
11 section and the proceedings and notices provided for in this
12 section; and the provisions of ss. 731.301(3) and
13 731.303~~(3)(4)~~ and ~~(4)(5)~~, relating to notice requirements, the
14 effect of notice, and representation of interests, shall apply
15 to the proceedings provided for in this section.

16 Section 184. Subsection (1) of section 737.111,
17 Florida Statutes, is amended to read:

18 737.111 Execution requirements for express trusts.--

19 (1) The testamentary aspects of a trust defined in s.
20 731.201~~(34)(33)~~, are invalid unless the trust instrument is
21 executed by the settlor with the formalities required for the
22 execution of a will.

23 Section 185. In editing manuscript for the next
24 official version of the Florida Statutes, the Division of
25 Statutory Revision and Indexing is directed to:

26 (1) Change the title of Part II of Chapter 732,
27 Florida Statutes, from "Elective Share of Surviving Spouse" to
28 "Elective Share of Surviving Spouse; Rights in Community
29 Property."

30 (2) Change the title of Part III of Chapter 733,
31 Florida Statutes, from "Priority to Administer and

1 Qualifications of Personal Representative" to "Preference in
2 Appointment and Qualifications of Personal Representative."

3 (3) Change the title of Part IV of Chapter 733,
4 Florida Statutes, from "Appointment of Personal
5 Representative; Bonds" to "Fiduciary Bonds."

6 (4) Change the title of Part V of Chapter 733, Florida
7 Statutes, from "Curators; Successor Personal Representative;
8 Removal" to "Curators; Resignation and Removal of Personal
9 Representatives."

10 Section 186. This act shall take effect January 1,
11 2002. The substantive rights of all persons which have vested
12 prior to January 1, 2002, shall be determined as provided in
13 former chapters 63, 215, 409, 660, and 731-737, Florida
14 Statutes, as they existed prior to January 1, 2002. The
15 procedures for the enforcement of substantive rights which
16 have vested prior to January 1, 2002, shall be as provided in
17 this act, except that any Family Administration filed before
18 January 1, 2002, may be completed as a Family Administration.

19
20 *****

21 LEGISLATIVE SUMMARY

22 Revises the Florida Probate Code to clarify current
23 provisions and to provide consistency throughout the
24 code. (See bill for details.)
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