

By the Committee on Judiciary and Senator Burt

308-1518-01

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. 732.2035, F.S.; redefining  
10 the term "decedent's ownership interest";  
11 amending s. 732.2045, F.S.; adding protected  
12 homestead property as an exclusion to the  
13 elective estate; amending s. 732.2055, F.S.;  
14 redefining the term "value" for purposes of  
15 calculating the elective estate share; amending  
16 s. 732.2075, F.S.; revising formula for payment  
17 of elective share; amending s. 732.2085, F.S.;  
18 adding a cross-reference; amending s. 732.2095,  
19 F.S.; conforming a cross-reference; modifying  
20 the formula for determining the fair market  
21 value of assets regarding the elective share;  
22 amending s. 732.2105, F.S.; revising the effect  
23 of an elective share election on their estate  
24 interests; amending s. 732.2125, F.S.; revising  
25 provisions with respect to the right of  
26 election; amending s. 732.2135, F.S.; revising  
27 provisions with respect to time of election,  
28 extensions, and withdrawal; amending s.  
29 732.2145, F.S.; revising provisions with  
30 respect to the order of contribution; amending  
31 s. 732.2155, F.S.; revising provisions with

1           respect to the effective date of certain  
2           trusts; amending s. 732.218, F.S.; revising  
3           provisions with respect to rebuttable  
4           presumptions; amending s. 732.219, F.S.,  
5           relating to disposition upon death; amending s.  
6           732.221, F.S.; revising provisions with respect  
7           to perfection of title of personal  
8           representative or beneficiary; amending s.  
9           732.222, F.S., relating to the purchaser for  
10          value or lender; amending s. 732.223, F.S.;  
11          revising provisions with respect to perfection  
12          of title of surviving spouse; amending s.  
13          732.302, F.S.; revising provisions with respect  
14          to pretermitted children; amending s. 732.401,  
15          F.S.; revising provisions with respect to  
16          descent of homestead; amending s. 732.4015,  
17          F.S.; revising provisions with respect to the  
18          definition of the terms "owner" and "devise"  
19          concerning homestead; amending s. 732.402,  
20          F.S.; revising provisions with respect to  
21          exempt property; amending s. 732.403, F.S.;  
22          revising provisions with respect to family  
23          allowance; amending s. 732.501, F.S.; revising  
24          provisions with respect to who may make a will;  
25          amending s. 732.502, F.S.; revising provisions  
26          with respect to execution of wills; amending s.  
27          732.503, F.S.; revising provisions with respect  
28          to self-proof of will; amending s. 732.505,  
29          F.S.; revising provisions with respect to  
30          revocation by writing; amending s. 732.507,  
31          F.S.; revising provisions with respect to

1 effect of subsequent marriage, birth, or  
2 dissolution of marriage; amending s. 732.513,  
3 F.S.; revising provisions with respect to  
4 devises to trustees; amending s. 732.514, F.S.,  
5 relating to vesting of devises; amending s.  
6 732.515, F.S.; revising provisions with respect  
7 to separate writing identifying devises of  
8 tangible property; amending s. 732.6005, F.S.,  
9 relating to rules of construction and  
10 intention; amending s. 732.601, F.S.; revising  
11 provisions with respect to the Simultaneous  
12 Death Law; amending s. 732.603, F.S.; revising  
13 provisions with respect to antilapse, deceased  
14 devises, and class gifts; amending s. 732.604,  
15 F.S., relating to the failure of a testamentary  
16 provision; amending s. 732.605, F.S., relating  
17 to change in securities, accessions, and  
18 nonademption; amending s. 732.606, F.S.,  
19 relating to nonademption of specific devises in  
20 certain cases; amending s. 732.701, F.S.;  
21 providing for agreements concerning succession  
22 executed by a nonresident under certain  
23 circumstances; amending s. 732.702, F.S.;  
24 revising provisions with respect to waiver of  
25 spousal rights; amending s. 732.801, F.S.;  
26 revising provisions with respect to disclaimer  
27 of interests in property passing by will or  
28 intestate succession or under certain powers of  
29 appointment; amending s. 732.804, F.S.;  
30 providing for provisions relating to  
31 disposition of the body; amending s. 732.901,

1 F.S., relating to production of wills,  
2 eliminating provisions with respect to willful  
3 failure to deposit the will; transferring and  
4 renumbering ss. 732.910, 732.911, 732.912,  
5 732.913, 732.914, 732.915, 732.916, 732.917,  
6 732.918, 732.9185, 732.919, 732.921, 732.9215,  
7 732.92155, 732.9216, and 732.922, F.S., to  
8 chapter 765, F.S.; amending s. 733.101, F.S.,  
9 relating to the venue of probate proceedings;  
10 amending s. 733.103, F.S., relating to the  
11 effect of probate; amending s. 733.104, F.S.;  
12 revising provisions with respect to the  
13 suspension of the statute of limitations in  
14 favor of the personal representative; amending  
15 s. 733.105, F.S.; revising provisions with  
16 respect to the determination of beneficiaries;  
17 amending s. 733.106, F.S.; revising provisions  
18 with respect to costs and attorney fees;  
19 amending s. 733.107, F.S., relating to the  
20 burden of proof in contests; amending s.  
21 733.109, F.S.; revising provisions with respect  
22 to the revocation of probate; amending s.  
23 733.201, F.S., relating to proof of wills;  
24 amending s. 733.202, F.S.; providing that any  
25 interested person may petition for  
26 administration; repealing s. 733.203, F.S.,  
27 relating to when notice is required; amending  
28 s. 733.204, F.S.; revising provisions with  
29 respect to the probate of a will written in a  
30 foreign language; amending s. 733.205, F.S.,  
31 relating to the probate of a notarial will;

1 amending s. 733.206, F.S., relating to the  
2 probate of a resident after foreign probate;  
3 amending s. 733.207, F.S.; revising  
4 requirements with respect to the establishment  
5 and probate of a lost or destroyed will;  
6 amending s. 733.208, F.S.; revising provisions  
7 with respect to the discovery of a later will;  
8 amending s. 733.209, F.S.; providing  
9 requirements with respect to the estates of  
10 missing persons; amending s. 733.212, F.S.;  
11 revising provisions with respect to the notice  
12 of administration and filing of objections;  
13 creating s. 733.2121, F.S.; providing for  
14 notice to creditors and the filing of claims;  
15 amending s. 733.2123, F.S., relating to  
16 adjudication before issuance of letters;  
17 amending s. 733.213, F.S.; providing that a  
18 will may not be construed until after it has  
19 been admitted to probate; amending s. 733.301,  
20 F.S.; revising provisions with respect to  
21 preference in the appointment of the personal  
22 representative; amending s. 733.302, F.S.;  
23 revising provisions with respect to who may be  
24 appointed personal representative; amending s.  
25 733.305, F.S., relating to trust companies and  
26 other corporations and associations; amending  
27 s. 733.306, F.S.; revising provisions with  
28 respect to the effect of the appointment of a  
29 debtor; amending s. 733.307, F.S., relating to  
30 succession of administration; amending s.  
31 733.308, F.S., relating to the administrator ad

1           litem; amending s. 733.309, F.S., relating to  
2           the executor de son tort; creating s. 733.310,  
3           F.S.; providing for when a personal  
4           representative is not qualified; repealing s.  
5           733.401, F.S., relating to the issuance of  
6           letters; amending s. 733.402, F.S.; revising  
7           provisions with respect to the bond of a  
8           fiduciary; amending s. 733.403, F.S.; revising  
9           provisions with respect to the amount of the  
10          bond; amending s. 733.404, F.S., relating to  
11          the liability of the surety; amending s.  
12          733.405, F.S.; revising provisions with respect  
13          to the release of surety; amending s. 733.406,  
14          F.S.; revising provisions with respect to bond  
15          premium allowable as an expense of  
16          administration; amending s. 733.501, F.S.;  
17          revising provisions with respect to curators;  
18          amending s. 733.502, F.S.; revising provisions  
19          with respect to the resignation of the personal  
20          representative; amending s. 733.503, F.S.;  
21          providing for the appointment of a successor  
22          upon the resignation of the personal  
23          representative; creating s. 733.5035, F.S.;  
24          providing for the surrender of assets after  
25          resignation; creating s. 733.5036, F.S.;  
26          providing for accounting and discharge  
27          following resignation; amending s. 733.504,  
28          F.S.; revising provisions with respect to the  
29          removal of the personal representative;  
30          amending s. 733.505, F.S.; providing that a  
31          petition for removal shall be filed in the

1 court having jurisdiction of the  
2 administration; amending s. 733.506, F.S.;  
3 revising provisions with respect to proceedings  
4 for removal; creating s. 733.5061, F.S.;  
5 providing for the appointment of a successor  
6 upon removal of the personal representative;  
7 repealing s. 733.507, F.S., relating to  
8 administration following resignation or  
9 removal; amending s. 733.508, F.S.; providing  
10 for accounting and discharge upon removal;  
11 amending s. 733.509, F.S.; revising provisions  
12 with respect to surrender of assets upon  
13 removal; amending s. 733.601, F.S.; revising  
14 provisions with respect to time of accrual of  
15 duties and powers; amending s. 733.602, F.S.,  
16 relating to the general duties of a personal  
17 representative; amending s. 733.603, F.S.,  
18 relating to when a personal representative may  
19 proceed without court order; amending s.  
20 733.604, F.S.; revising provisions with respect  
21 to inventory; repealing s. 733.605, F.S.,  
22 relating to appraisers; creating s. 733.6065,  
23 F.S.; providing for the opening of a  
24 safe-deposit box; amending s. 733.607, F.S.;  
25 revising provisions with respect to the  
26 possession of the estate; amending s. 733.608,  
27 F.S.; revising provisions with respect to the  
28 general power of the personal representative;  
29 amending s. 733.609, F.S.; revising provisions  
30 with respect to improper exercise of power and  
31 the breach of fiduciary duty; amending s.



1 733.610, F.S., relating to the sale,  
2 encumbrance, or transaction involving a  
3 conflict of interest; amending s. 733.611,  
4 F.S.; revising provisions with respect to  
5 persons dealing with the personal  
6 representative; amending s. 733.612, F.S.;  
7 revising provisions with respect to  
8 transactions authorized for the personal  
9 representatives and exceptions thereto;  
10 amending s. 733.6121, F.S., relating to powers  
11 of the personal representative with respect to  
12 environmental or human health laws affecting  
13 property subject to administration; amending s.  
14 733.613, F.S.; revising provisions with respect  
15 to the personal representative's right to sell  
16 real property; amending s. 733.614, F.S.,  
17 relating to the powers and duties of a  
18 successor personal representative; amending s.  
19 733.615, F.S.; revising provisions with respect  
20 to joint personal representatives; amending s.  
21 733.616, F.S.; revising provisions with respect  
22 to the powers of the surviving personal  
23 representatives; amending s. 733.617, F.S.;  
24 revising provisions with respect to  
25 compensation of the personal representative;  
26 amending s. 733.6171, F.S.; revising provisions  
27 with respect to compensation of the attorney  
28 for the personal representative; amending s.  
29 733.6175, F.S.; revising provisions with  
30 respect to proceedings for review of employment  
31 of agents and compensation of personal

1 representatives and employees of the estate;  
2 amending s. 733.619, F.S., relating to the  
3 individual liability of the personal  
4 representative; amending s. 733.701, F.S.;  
5 revising provisions with respect to notifying  
6 creditors; conforming cross-references;  
7 amending s. 733.702, F.S.; revising provisions  
8 with respect to limitations on presentation of  
9 claims; amending s. 733.703, F.S.; revising  
10 provisions with respect to the form and manner  
11 of presenting a claim; amending s. 733.704,  
12 F.S., relating to amendment of claims; amending  
13 s. 733.705, F.S.; revising provisions with  
14 respect to payment of and objection to claims;  
15 amending s. 733.707, F.S.; revising provisions  
16 with respect to the order of payment of  
17 expenses and obligations; amending s. 733.708,  
18 F.S.; revising provisions with respect to  
19 compromise; amending s. 733.710, F.S., relating  
20 to claims against estates; amending s. 733.801,  
21 F.S.; providing that the personal  
22 representative shall pay as an expense of  
23 administration certain costs; amending s.  
24 733.802, F.S.; revising provisions with respect  
25 to proceedings for compulsory payment of  
26 devises or distributive interest; amending s.  
27 733.803, F.S., relating to encumbered property;  
28 amending s. 733.805, F.S.; revising provisions  
29 with respect to the order in which assets are  
30 appropriated; amending s. 733.806, F.S.,  
31 relating to advancement; amending s. 733.808,

1 F.S.; revising provisions with respect to death  
2 benefits and disposition of proceeds; amending  
3 s. 733.809, F.S., relating to right of  
4 retainer; amending s. 733.810, F.S.; revising  
5 provisions with respect to distribution in kind  
6 and valuation; amending s. 733.811, F.S.;  
7 revising provisions with respect to the right  
8 or title of distributee; amending s. 733.812,  
9 F.S.; providing for improper distribution or  
10 payment and liability of distributee; amending  
11 s. 733.813, F.S., relating to protection of the  
12 purchaser from the distributee; amending s.  
13 733.814, F.S.; revising provisions with respect  
14 to partition for the purpose of distribution;  
15 amending s. 733.815, F.S.; providing for  
16 private contracts among certain interested  
17 persons; amending s. 733.816, F.S., relating to  
18 the distribution of unclaimed property held by  
19 the personal representative; amending s.  
20 733.817, F.S.; revising provisions with respect  
21 to apportionment of estate taxes; amending s.  
22 733.901, F.S.; providing requirements with  
23 respect to final discharge; amending s.  
24 733.903, F.S.; revising provisions with respect  
25 to subsequent administration; amending s.  
26 734.101, F.S., relating to the foreign personal  
27 representative; amending s. 734.102, F.S.;  
28 revising provisions with respect to ancillary  
29 administration; amending s. 734.1025, F.S.;  
30 revising provisions with respect to the  
31 nonresident decedent's testate estate with

1 property not exceeding a certain value in this  
2 state; providing for the determination of  
3 claims; amending s. 734.104, F.S., relating to  
4 foreign wills; amending s. 734.201, F.S.,  
5 relating to jurisdiction by act of a foreign  
6 personal representative; amending s. 734.202,  
7 F.S., relating to jurisdiction by act of  
8 decedent; repealing s. 735.101, F.S., relating  
9 to family administration and the nature of the  
10 proceedings; repealing s. 735.103, F.S.,  
11 relating to petition for family administration;  
12 repealing s. 735.107, F.S., relating to family  
13 administration distribution; amending s.  
14 735.201, F.S.; increasing a monetary amount  
15 with respect to summary administration;  
16 amending s. 735.203, F.S.; revising provisions  
17 with respect to the petition for summary  
18 administration; amending s. 735.206, F.S.;  
19 revising provisions with respect to summary  
20 administration distribution; amending s.  
21 735.2063, F.S.; revising provisions with  
22 respect to notice to creditors; repealing s.  
23 735.209, F.S., relating to joinder of heirs,  
24 devisees, or surviving spouse in summary  
25 administration; amending s. 735.301, F.S.,  
26 relating to disposition without administration;  
27 amending s. 735.302, F.S.; revising provisions  
28 with respect to income tax refunds in certain  
29 circumstances; creating s. 737.208, F.S.;  
30 prohibiting distribution pending outcome of  
31 contest; providing exceptions; amending s.

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

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Paragraphs (b) and (c) of subsection (1) of  
19 section 63.172, Florida Statutes, are amended to read:

20           63.172 Effect of judgment of adoption.--

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

24           (b) It terminates all legal relationships between the  
25 adopted person and the adopted person's relatives, including  
26 the birth parents, except a birth parent who is a petitioner  
27 or who is married to a petitioner, so that the adopted person  
28 thereafter is a stranger to his or her former relatives for  
29 all purposes, including ~~inheritance~~ and the interpretation or  
30 construction of documents, statutes, and instruments, whether  
31 executed before or after entry of the adoption judgment, that

1 do not expressly include the adopted person by name or by some  
2 designation not based on a parent and child or blood  
3 relationship, except that rights of inheritance shall be as  
4 provided in the Florida Probate Code.

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

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

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

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

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

30 ~~(3) Pursuant to s. 733.212(4)(a), the personal~~  
31 ~~representative of the estate of the decedent shall serve the~~

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

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

20 ~~(4)(5)~~ At the time of filing the claim, The agency may  
21 ~~reserve the right to amend the claim as a matter of right up~~  
22 ~~to 6 months after the service of a notice to creditors on the~~  
23 ~~agency amounts based on medical claims submitted by providers~~  
24 ~~subsequent to the agency's initial claim calculation.~~

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

31

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

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

6           (a) A spouse;

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

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

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

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

28           (a) The beneficiary heir:

29           1. Currently resides in the residence of the  
30 decedent, +

31



1           2. Resided there at the time of the death of the  
2 decedent,<sup>†</sup>

3           3. Has made the residence his or her primary residence  
4 for the 12 months immediately preceding the death of the  
5 decedent,<sup>†</sup>and

6           4. Owns no other residence;

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

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

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

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

31

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

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

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

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

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

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

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

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

16 (4)(3) A lessor is not liable for damages or penalty  
17 by reason of any delivery made pursuant to this section.

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

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

30  
31

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

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

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

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

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

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

29           731.106 Assets of nondomiciliaries.--

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

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

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

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

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

29 731.110 Caveat; proceedings.--

30 (1) Any person, including a creditor, who ~~if any~~  
31 ~~creditor of the estate of a decedent~~ is apprehensive that an

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

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

18 Section 10. Section 731.111, Florida Statutes, is  
19 repealed.

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

22 731.201 General definitions.--Subject to additional  
23 definitions in subsequent chapters that are applicable to  
24 specific chapters or parts, and unless the context otherwise  
25 requires, in this code, in s. 409.9101, and in chapters 737,  
26 738, and 744:

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

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

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

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

22           (5) "Clerk" means the clerk or deputy clerk of the  
23 court.

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

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

28           (8) "Devise," when used as a noun, means a  
29 testamentary disposition of real or personal property and,  
30 when used as a verb, means to dispose of real or personal  
31 property by will or trust. The term includes "gift," "give,"

1 "bequeath," "bequest," and "legacy." A devise is subject to  
2 charges for debts, expenses, and taxes as provided in this  
3 code, ~~or in the will,~~ or the trust.

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

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

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

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

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

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

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

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

31



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

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

8           (19) "Incompetent" means a minor or a person  
9 adjudicated incompetent.

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

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

28           (22) "Letters" means authority granted by the court to  
29 the personal representative to act on behalf of the estate of  
30 the decedent and refers to what has been known as letters  
31

1 | testamentary and letters of administration. All letters shall  
2 | be designated "letters of administration."

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

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

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

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

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

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

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

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

31 |

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

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

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

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

31

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

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

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

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

12           (1) ~~FORMAL NOTICE.--~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 732.101 Intestate estate.--

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1           732.107 Escheat.--

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

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

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

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

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

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

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

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

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

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

30  
31

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

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

6 Section 18. Section 732.1101, Florida Statutes, is  
7 amended to read:

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

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

14 732.2025 Definitions.--As used in ss.  
15 732.2025-732.2155, the term:

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

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

28 (b) During the spouse's life, no person other than the  
29 spouse has the power to distribute income or principal to  
30 anyone other than the spouse.

31

1           ~~(c)~~ The requirement for court approval ~~and the~~  
2 ~~limitation on ineligible family trustees~~ shall not apply if  
3 the aggregate value of all the trust property as of the  
4 applicable valuation date in all a qualifying special needs  
5 trusts for the spouse trust is less than \$100,000. For  
6 purposes of this paragraph, value is determined on the  
7 "applicable valuation date" as defined in s. 732.2095(1)(a).

8           Section 20. Subsection (2) and paragraph (a) of  
9 subsection (5) of section 732.2035, Florida Statutes, are  
10 amended to read:

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

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

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

29           1. The decedent possessed the right to, or in fact  
30 enjoyed the possession or use of, the income or principal of  
31 the property; or

1           2. The principal of the property could, in the  
2 discretion of any person other than the spouse of the  
3 decedent, be distributed or appointed to or for the benefit of  
4 the decedent.

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

12           Section 21. Subsection (1) of section 732.2045,  
13 Florida Statutes, is amended to read:

14           732.2045 Exclusions and overlapping application.--

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

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

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

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

29           (d) The proceeds of any policy of insurance on the  
30 decedent's life in excess of the net cash surrender value of  
31

1 the policy whether payable to the decedent's estate, a trust,  
2 or in any other manner.

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

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

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

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

14 (i) Property that constitutes the protected homestead  
15 of the decedent whether held by the decedent or by a trust at  
16 the decedent's death.

17 Section 22. Subsection (5) of section 732.2055,  
18 Florida Statutes, is amended to read:

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

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

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

26 (b) To the extent they are not deducted under  
27 paragraph (a), all mortgages, liens, or security interests on  
28 the property.

29 Section 23. Subsection (2) of section 732.2075,  
30 Florida Statutes, is amended to read:

31

1           732.2075 Sources from which elective share payable;  
2 abatement.--

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

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

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

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

22           (d) Class 4.--Recipients of protected charitable lead  
23 interests, provided that contribution shall be enforceable  
24 against the recipients of any such interest until after the  
25 expiration of all charitable interest in the property for  
26 which a deduction was allowed or allowable to the decedent or  
27 the decedent's spouse under the United States gift tax laws.

28  
29 For purposes of this subsection a "protected charitable  
30 interest" is any interest for which a charitable deduction  
31 with respect to the transfer of the property was allowed or



1 allowable to the decedent or the decedent's spouse under the  
2 United States gift tax laws. A "protected charitable lead  
3 interest" is a protected charitable interest when one or more  
4 deductible interests in charity precede some other  
5 nondeductible interest or interests in the property.

6 Section 24. Paragraph (a) of subsection (1) and  
7 paragraph (a) of subsection (3) of section 732.2085, Florida  
8 Statutes, are amended to read:

9 732.2085 Liability of direct recipients and  
10 beneficiaries.--

11 (1) Only direct recipients of property included in the  
12 elective estate and the beneficiaries of the decedent's  
13 probate estate or of any trust that is a direct recipient, are  
14 liable to contribute toward satisfaction of the elective  
15 share.

16 (a) Within each of the classes described in s.  
17 732.2075(2)(b), ~~and~~ (c), and (d) each direct recipient is  
18 liable in an amount equal to the value, as determined under s.  
19 732.2055, of the proportional part of the liability for all  
20 members of the class.

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

24 (a) No further contribution toward satisfaction of the  
25 elective share shall be required with respect to that ~~such~~  
26 property.

27 Section 25. Paragraph (a) of subsection (1) and  
28 paragraph (d) of subsection (2) of section 732.2095, Florida  
29 Statutes, are amended to read:

30 732.2095 Valuation of property used to satisfy  
31 elective share.--

- 1 (1) DEFINITIONS.--As used in this section, the term:  
2 (a) "Applicable valuation date" means:  
3 1. In the case of transfers in satisfaction of the  
4 elective share, the date of the decedent's death.  
5 2. In the case of property held in a qualifying  
6 special needs trust on the date of the decedent's death, the  
7 date of the decedent's death.  
8 3. In the case of other property irrevocably  
9 transferred to or for the benefit of the surviving spouse  
10 during the decedent's life, the date of the transfer.  
11 4. In the case of property distributed to the  
12 surviving spouse by the personal representative, the date of  
13 distribution.  
14 5. Except as provided in subparagraphs 1., 2., and 3.,  
15 in the case of property passing in trust for the surviving  
16 spouse, the date or dates the trust is funded in satisfaction  
17 of the elective share.  
18 6. In the case of property described in s. 732.2035(2)  
19 or (3)~~s. 732.2035(3) or (4)~~, the date of the decedent's  
20 death.  
21 7. In the case of proceeds of any policy of insurance  
22 payable to the surviving spouse, the date of the decedent's  
23 death.  
24 8. In the case of amounts payable to the surviving  
25 spouse under any plan or arrangement described in s.  
26 732.2035(7), the date of the decedent's death.  
27 9. In all other cases, the date of the decedent's  
28 death or the date the surviving spouse first comes into  
29 possession of the property, whichever occurs later.  
30  
31

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

4           (d) If the surviving spouse has an interest in a trust  
5 that does not meet the requirements of either an elective  
6 share trust or a qualifying special needs trust, the value of  
7 the spouse's interest is the transfer tax value of the  
8 interest on the applicable valuation date; however, the  
9 aggregate value of all of the spouse's interests in the trust  
10 shall not exceed one-half of the value of the trust principal  
11 on the applicable valuation date.

12           Section 26. Section 732.2105, Florida Statutes, is  
13 amended to read:

14           732.2105 Effect of election on other interests.--

15           ~~(1)~~ The elective share shall be in addition to  
16 homestead, exempt property, and allowances as provided in part  
17 IV.

18           ~~(2) If an election is filed, the balance of the~~  
19 ~~elective estate, after the application of s. 732.2145(1),~~  
20 ~~shall be administered as though the surviving spouse had~~  
21 ~~predeceased the decedent.~~

22           Section 27. Subsection (2) of section 732.2125,  
23 Florida Statutes, is amended to read:

24           732.2125 Right of election; by whom exercisable.--The  
25 right of election may be exercised:

26           (2) With approval of the court having jurisdiction of  
27 the probate proceeding by an attorney in fact or a guardian of  
28 the property of the surviving spouse, ~~with approval of the~~  
29 ~~court having jurisdiction of the probate proceeding.~~ The court  
30 shall determine the election as the best interests of the  
31

1 surviving spouse, during the spouse's probable lifetime,  
2 require.

3 Section 28. Section 732.2135, Florida Statutes, is  
4 amended to read:

5 732.2135 Time of election; extensions; withdrawal.--

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

12 (2) Within the period provided in subsection (1), the  
13 surviving spouse or an attorney in fact or guardian of the  
14 property of the surviving spouse may petition the court for an  
15 extension of time for making an election. ~~After notice and~~  
16 ~~hearing, the court~~ For good cause shown the court may extend  
17 the time for election. If the court grants the petition for an  
18 extension, the election must be filed within the time allowed  
19 by the extension.

20 (3) The surviving spouse or an attorney in fact,  
21 guardian of the property, or personal representative of the  
22 surviving spouse may withdraw an election at any time within 8  
23 months of the decedent's death and before the court's order of  
24 contribution. If an election is withdrawn, the court may  
25 assess attorney's fees and costs against the surviving spouse  
26 or the surviving spouse's estate.

27 (4) A petition for an extension of the time for making  
28 the election or for approval to make the election shall toll  
29 the time for making the election.

30 Section 29. Subsections (1) and (4) of section  
31 732.2145, Florida Statutes, are amended to read:

1           732.2145 Order of contribution; personal  
2 representative's duty to collect contribution.--

3           (1) The court shall determine the elective share and  
4 ~~shall order~~ contribution. ~~All~~ Contributions shall ~~are to~~ bear  
5 interest at the statutory rate ~~provided in s. 55.03(1)~~  
6 beginning 90 days after ~~from~~ the ~~date of the~~ order of  
7 contribution. The order ~~of contribution~~ is prima facie correct  
8 in proceedings in any court or jurisdiction.

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

16           Section 30. Subsection (4) of section 732.2155,  
17 Florida Statutes, is amended to read:

18           732.2155 Effective date; effect of prior waivers;  
19 transition rules.--

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

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

29           732.218 Rebuttable presumptions.--In determining  
30 whether ss. 732.216-732.228 apply to specific property, the  
31 following rebuttable presumptions apply:

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

9           Section 32. Section 732.219, Florida Statutes, is  
10 amended to read:

11           732.219 Disposition upon death.--Upon the death of a  
12 married person, one-half of the property to which ss.  
13 732.216-732.228 apply is the property of the surviving spouse  
14 and is not subject to testamentary disposition by the decedent  
15 or distribution under the laws of succession of this state.  
16 One-half of that property is the property of the decedent and  
17 is subject to testamentary disposition or distribution under  
18 the laws of succession of this state. The decedent's one-half  
19 of that ~~the~~ property is not in the elected estate ~~subject to~~  
20 ~~the surviving spouse's right to elect against the will.~~

21           Section 33. Section 732.221, Florida Statutes, is  
22 amended to read:

23           732.221 Perfection of title of personal representative  
24 or beneficiary, ~~heir, or devisee~~.--If the title to any  
25 property to which ss. 732.216-732.228 apply is held by the  
26 surviving spouse at the time of the decedent's death, the  
27 personal representative or a beneficiary ~~an heir or devisee~~ of  
28 the decedent may institute an action to perfect title to the  
29 property. The personal representative has no ~~fiduciary~~ duty  
30 to discover whether any property held by the surviving spouse  
31 is property to which ss. 732.216-732.228 ~~these sections~~ apply,

1 unless a written demand is made by a beneficiary ~~an heir,~~  
2 ~~devisee, or creditor of the decedent~~ within 3 ~~6~~ months after  
3 service of a copy ~~the first publication~~ of the notice of  
4 administration on the beneficiary or by a creditor within 3  
5 months after the first publication of the notice to creditors.

6 Section 34. Subsections (1) and (2) of section  
7 732.222, Florida Statutes, are amended to read:

8 732.222 Purchaser for value or lender.--

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

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

21 Section 35. Section 732.223, Florida Statutes, is  
22 amended to read:

23 732.223 Perfection of title of surviving spouse.--If  
24 the title to any property to which ss. 732.216-732.228 apply  
25 was held by the decedent at the time of the decedent's ~~his or~~  
26 ~~her~~ death, title of the surviving spouse may be perfected by  
27 an order of the probate court or by execution of an instrument  
28 by the personal representative or the beneficiaries ~~heirs or~~  
29 ~~devisees~~ of the decedent with the approval of the probate  
30 court. The probate court in which the decedent's estate is  
31 being administered has no duty to discover whether property

1 held by the decedent is property to which ss. 732.216-732.228  
2 apply. The personal representative has no duty to discover  
3 whether property held by the decedent is property to which ss.  
4 732.216-732.228 apply unless a written demand is made by the  
5 surviving spouse or the spouse's successor in interest within  
6 3 ~~6~~ months after service of a copy of ~~the first publication of~~  
7 the notice of administration on the surviving spouse or the  
8 spouse's successor in interest.

9 Section 36. Section 732.302, Florida Statutes, is  
10 amended to read:

11 732.302 Pretermitted children.--When a testator omits  
12 to provide by ~~in his or her~~ will for any of his or her  
13 children born or adopted after making the will and the child  
14 has not received a part of the testator's property equivalent  
15 to a child's part by way of advancement, the child shall  
16 receive a share of the estate equal in value to that which the  
17 child ~~he or she~~ would have received if the testator had died  
18 intestate, unless:

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

21 (2) The testator had one or more children when the  
22 will was executed and devised substantially all the estate to  
23 the other parent of the pretermitted child and that other  
24 parent survived the testator and is entitled to take under the  
25 will.

26  
27 The share of the estate that is assigned to the pretermitted  
28 child shall be obtained in accordance with s. 733.805.

29 Section 37. Section 732.401, Florida Statutes, is  
30 amended to read:

31 732.401 Descent of homestead.--



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

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

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

14           732.4015 Devise of homestead.--

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

16           (a) "Owner" includes the grantor settlor of a trust  
17 described in s. 733.707(3) that is evidenced by a written  
18 instrument that is in existence at the time of the grantor's  
19 settlor's death as if the interest held in trust were owned by  
20 the grantor pursuant to which the settlor retained the right  
21 ~~either alone or in conjunction with any other person to amend~~  
22 ~~or revoke the trust at any time before his or her death.~~

23           (b) "Devise" includes a disposition by trust of that  
24 portion of the trust estate which, if titled in the name of  
25 the grantor settlor of the trust, would be the grantor's  
26 ~~settlor's~~ homestead.

27           Section 39. Subsections (4) and (6) of section  
28 732.402, Florida Statutes, are amended, and subsection (7) is  
29 added to that section to read:

30           732.402 Exempt property.--

1           (4) Exempt property shall be in addition to protected  
2 homestead, statutory entitlements, and any property passing  
3 under to the surviving spouse or heirs of the decedent under  
4 ~~s. 4, Art. X of the State Constitution or the decedent's will,~~  
5 or by intestate succession, ~~elective share, or family~~  
6 allowance.

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

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

21           Section 40. Section 732.403, Florida Statutes, is  
22 amended to read:

23           732.403 Family allowance.--In addition to protected  
24 homestead and statutory entitlements ~~exempt property~~, if the  
25 decedent was domiciled in Florida at the time of death, the  
26 surviving spouse and the decedent's lineal heirs ~~whom~~ the  
27 decedent was supporting or was obligated to support ~~or who~~  
28 ~~were in fact being supported by him or her~~ are entitled to a  
29 reasonable allowance in money out of the estate for their  
30 maintenance during administration. ~~After notice and hearing,~~  
31 The court may order this allowance to be paid as a lump sum or

1 in periodic installments. The allowance shall not exceed a  
2 total of \$18,000~~\$6,000~~. It shall be paid to the surviving  
3 spouse, if living, for the use of the spouse and dependent  
4 lineal heirs. If the surviving spouse is not living, it shall  
5 be paid to the lineal heirs or to the persons having their  
6 care and custody. If any lineal heir is not living with the  
7 surviving spouse, the allowance may be made partly to the  
8 lineal heir or ~~his or her~~ guardian or other person having the  
9 ~~lineal~~ heir's care and custody and partly to the surviving  
10 spouse, as the needs of the dependent ~~lineal~~ heir and the  
11 surviving spouse appear. ~~The family allowance shall have the~~  
12 ~~priority established by s. 733.707.~~ The family allowance is  
13 not chargeable against any benefit or share otherwise passing  
14 to the surviving spouse or to the dependent lineal heirs ~~by~~  
15 ~~intestate succession, elective share, or the will of the~~  
16 ~~decedent~~, unless the will otherwise provides. The death of any  
17 person entitled to a family allowance terminates the ~~his or~~  
18 ~~her~~ right to that ~~the~~ part of the allowance not paid. For  
19 purposes of this section, the term "lineal heir" or "lineal  
20 heirs" means lineal ascendants and lineal descendants of the  
21 decedent.

22 Section 41. Section 732.501, Florida Statutes, is  
23 amended to read:

24 732.501 Who may make a will.--Any person who is of  
25 sound mind and who is either 18 or more years of age or an  
26 emancipated minor ~~18 or more years of age who is of sound mind~~  
27 may make a will.

28 Section 42. Paragraph (a) of subsection (1) and  
29 subsection (2) of section 732.502, Florida Statutes, are  
30 amended to read:

31

1           732.502 Execution of wills.--Every will must be in  
2 writing and executed as follows:

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

4           1. The testator must sign the will at the end; or

5           2. The testator's name must be subscribed at the end  
6 of the will by some other person in the testator's presence  
7 and by the testator's ~~his or her~~ direction.

8           (2) Any will, other than a holographic or nuncupative  
9 will, executed by a nonresident of Florida, either before or  
10 after this law takes effect, is valid as a will in this state  
11 if valid under the laws of the state or country where the will  
12 was executed ~~testator was at the time of execution~~. A will in  
13 the testator's handwriting that has been executed in  
14 accordance with subsection (1) shall not be considered a  
15 holographic will.

16           Section 43. Section 732.503, Florida Statutes, is  
17 amended to read:

18           732.503 Self-proof of will.--

19           (1) A will or codicil executed in conformity with s.  
20 ~~732.502(1) and (2)~~ may be made self-proved at the time of its  
21 execution or at any subsequent date by the acknowledgment of  
22 it by the testator and the affidavits of the witnesses, ~~each~~  
23 made before an officer authorized to administer oaths and  
24 evidenced by the officer's certificate attached to or  
25 following the will, in substantially the following form:

26  
27 STATE OF FLORIDA

28 COUNTY OF ....

29           I, \_\_\_\_\_, declare to the officer taking my  
30 acknowledgment of this instrument, and to the subscribing  
31 witnesses, that I signed this instrument as my will.

1  
2  
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\_\_\_\_\_

Testator

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

\_\_\_\_\_

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

1 the presence of the testator and the subscribing witnesses,  
2 all on ...(date)...  
3 ...(Signature of Officer)...  
4 ...(Print, type, or stamp commissioned name and affix official  
5 seal)...

6  
7 (2) A will or codicil made self-proved under former  
8 law, or executed in another state and made self-proved under  
9 the laws of that state, shall be considered as self-proved  
10 under this section.

11  
12 ~~STATE OF ....~~

13 ~~COUNTY OF ....~~

14 ~~We, ....., ....., and .... the testator and the~~  
15 ~~witnesses, respectively, whose names are signed to the~~  
16 ~~attached or foregoing instrument, having been sworn, declared~~  
17 ~~to the undersigned officer that the testator, in the presence~~  
18 ~~of witnesses, signed the instrument as the testator's last~~  
19 ~~will (codicil), that the testator (signed) (or directed~~  
20 ~~another to sign for him or her), and that each of the~~  
21 ~~witnesses, in the presence of the testator and in the presence~~  
22 ~~of each other, signed the will as a witness.~~

23 ~~...(Testator)...~~

24 ~~...(Witness)...~~

25 ~~...(Witness)...~~

26 ~~Subscribed and sworn to before me by ....., the testator~~  
27 ~~who is personally known to me or who has produced ...(type of~~  
28 ~~identification).... as identification, and by ....., a witness~~  
29 ~~who is personally known to me or who has produced ...(type of~~  
30 ~~identification).... as identification, and by ....., a witness~~

31

1 ~~who is personally known to me or who has produced ... (type of~~  
2 ~~identification) ... as identification, on ..., ... (year) ...~~  
3 ~~... (Signature of Notary Public) ...~~  
4 ~~... (Print, type, or stamp commissioned name of Notary~~  
5 ~~Public) ...~~

6  
7 Section 44. Section 732.505, Florida Statutes, is  
8 amended to read:

9 732.505 Revocation by writing.--A will or codicil, or  
10 any part of either, is revoked:

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

15 (2) By a subsequent ~~written~~ will, codicil, or other  
16 writing executed with the same formalities required for the  
17 execution of wills declaring the revocation, ~~if the same~~  
18 ~~formalities required for the execution of wills are observed~~  
19 ~~in the execution of the will, codicil, or other writing.~~

20 Section 45. Section 732.507, Florida Statutes, is  
21 amended to read:

22 732.507 Effect of subsequent marriage, birth, or  
23 dissolution of marriage.--

24 (1) Neither subsequent marriage, ~~nor subsequent~~  
25 ~~marriage and birth, nor~~ or adoption of lineal descendants  
26 shall revoke the prior will of any person, but the  
27 pretermitted child or spouse shall inherit as set forth in ss.  
28 732.301 and 732.302, regardless of the prior will.

29 (2) Any provision ~~provisions~~ of a will executed by a  
30 married person, ~~which provision~~ affects the spouse of that  
31 person, shall become void upon the divorce of that person or

1 upon the dissolution or annulment of the marriage. After the  
2 dissolution, divorce, or annulment, the ~~any such~~ will shall be  
3 administered and construed as if the former spouse had died at  
4 the time of the dissolution, divorce, or annulment of the  
5 marriage, unless the will or the dissolution or divorce  
6 judgment expressly provides otherwise.

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

10 732.513 Devises to trustee.--

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

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

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

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

25 Section 47. Section 732.514, Florida Statutes, is  
26 amended to read:

27 732.514 Vesting of devises.--The death of the testator  
28 is the event that vests the right to devises unless the  
29 testator in the ~~his or her~~ will has provided that some other  
30 event must happen before a devise vests ~~shall vest~~.

31



1           Section 48. Section 732.515, Florida Statutes, is  
2 amended to read:

3           732.515 Separate writing identifying devisees of  
4 tangible property.--A ~~will may refer to a~~ written statement or  
5 list referred to in the decedent's will shall ~~to~~ dispose of  
6 items of tangible personal property, other than property used  
7 in trade or business,not otherwise specifically disposed of  
8 by the will,~~other than money and property used in trade or~~  
9 ~~business~~. To be admissible under this section as evidence of  
10 the intended disposition, the writing must be signed by the  
11 testator and must describe the items and the devisees with  
12 reasonable certainty. The writing ~~may be referred to as one~~  
13 ~~in existence at the time of the testator's death.~~ It may be  
14 prepared before or after the execution of the will. It may be  
15 altered by the testator after its preparation. It may be a  
16 writing that has no significance apart from its effect upon  
17 the dispositions made by the will. If more than one otherwise  
18 effective writing exists then, to the extent of any conflict  
19 among the writings, the provisions of the most recent writing  
20 revoke the inconsistent provisions of each prior writing.

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

23           732.6005 Rules of construction and intention.--

24           (1) The intention of the testator as expressed in the  
25 ~~his or her~~ will controls the legal effect of the testator's  
26 dispositions. The rules of construction expressed in this  
27 part shall apply unless a contrary intention is indicated by  
28 the will.

29           Section 50. Section 732.601, Florida Statutes, is  
30 amended to read:

31

1           732.601 Simultaneous Death Law.--Unless a contrary  
2 intention appears in the governing instrument:

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

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

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

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

30           ~~(5) This law shall not apply in the case of wills,~~  
31 ~~living trusts, deeds, or contracts of insurance in which~~

1 ~~provision has been made for distribution of property different~~  
2 ~~from the provisions of this law.~~

3 Section 51. Section 732.603, Florida Statutes, is  
4 amended to read:

5 732.603 Antilapse; deceased devisee; class  
6 gifts.--Unless a contrary intention appears in the will:

7 (1) If a devisee or a beneficiary of a trust created  
8 by a will who is a grandparent, or a lineal descendant of a  
9 grandparent, of the testator:

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

12 (b) Fails to survive the testator, or

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

15  
16 then the descendants of the devisee or beneficiary take per  
17 stirpes in place of the deceased devisee or beneficiary. A  
18 person who would have been a devisee under a class gift if  
19 that person ~~he or she~~ had survived the testator shall be a  
20 devisee for purposes of this section whether that person died  
21 ~~his or her death occurred~~ before or after the execution of the  
22 will.

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

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

28 (b) Fails to survive the testator, or

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

31

1 then the testamentary disposition to the devisee or  
2 beneficiary shall lapse unless an intention to substitute  
3 another ~~in his or her place~~ appears in the will.

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

6 732.604 Failure of testamentary provision.--

7 (2) Except as provided in s. 732.603, if the residue  
8 is devised to two or more persons and the devise to ~~share of~~  
9 one of the residuary devisees fails for any reason, that  
10 devise ~~his or her share~~ passes to the other residuary devisee,  
11 or to the other residuary devisees in proportion to their  
12 interests in the residue.

13 Section 53. Section 732.605, Florida Statutes, is  
14 amended to read:

15 732.605 Change in securities; accessions;  
16 nonademption.--

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

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

22 (b) Any additional or other securities of the same  
23 entity owned by the testator because of action initiated by  
24 the entity, excluding any acquired by exercise of purchase  
25 options.

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

29 (d) Securities of the same entity acquired as a result  
30 of a plan of reinvestment.

31

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

5           Section 54. Subsection (1) and paragraph (d) of  
6 subsection (2) of section 732.606, Florida Statutes, are  
7 amended to read:

8           732.606 Nonademption of specific devises in certain  
9 cases; sale by guardian of the property; unpaid proceeds of  
10 sale, condemnation, or insurance.--

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

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

26           (d) Property owned by the testator at ~~his or her~~ death  
27 as a result of foreclosure, or obtained instead of  
28 foreclosure, of the security for the specifically devised  
29 obligation.

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

1           732.701 Agreements concerning succession.--

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

12           Section 56. Section 732.702, Florida Statutes, is  
13 amended to read:

14           732.702 Waiver of spousal ~~right to elect and of other~~  
15 ~~rights.--~~

16           (1) The rights ~~right of election~~ of a surviving  
17 ~~spouse, the rights of the surviving spouse as intestate~~  
18 ~~successor or as a pretermitted spouse, and the rights of the~~  
19 ~~surviving spouse to an elective share, intestate share,~~  
20 pretermitted share, homestead, exempt property, and family  
21 allowance, and preference in appointment as personal  
22 representative of an intestate estate or any of those rights  
23 ~~them~~, may be waived, wholly or partly, before or after  
24 marriage, by a written contract, agreement, or waiver, signed  
25 by the waiving party in the presence of two subscribing  
26 witnesses. The requirement of witnesses shall be applicable  
27 only to contracts, agreements, or waivers signed by Florida  
28 residents after the effective date of this law. Any contract,  
29 agreement, or waiver executed by a nonresident of Florida,  
30 either before or after this law takes effect, is valid in this  
31 state if valid when executed under the laws of the state or

1 country where it was executed, whether or not he or she is a  
2 Florida resident at the time of death.Unless the waiver it  
3 provides to the contrary, a waiver of "all rights," or  
4 equivalent language, in the property or estate of a present or  
5 prospective spouse, or a complete property settlement entered  
6 into after, or in anticipation of, separation, dissolution of  
7 marriage, or divorce, is a waiver of all rights to elective  
8 share, intestate share, pretermitted share, homestead  
9 property, exempt property, and family allowance, and  
10 preference in appointment as personal representative of an  
11 intestate estate, by the waiving party ~~each spouse~~ in the  
12 property of the other and a renunciation by the waiving party  
13 ~~each~~ of all benefits that would otherwise pass to the waiving  
14 party ~~either~~ from the other by intestate succession or by the  
15 provisions of any will executed before the written contract,  
16 agreement, or waiver ~~or property settlement~~.

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

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

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

27 732.801 Disclaimer of interests in property passing by  
28 will or intestate succession or under certain powers of  
29 appointment.--

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

31

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

4 1. By intestate succession or devise.

5 2. Under descent of homestead, exempt property, or  
6 family allowance or under s. 222.13.

7 3. Through exercise or nonexercise of a power of  
8 appointment exercisable by will.

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

11 5. As beneficiary of a testamentary trust.

12 6. As a beneficiary of a testamentary gift to any  
13 nontestamentary trust.

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

15 8. By succession in any manner described in this  
16 subsection to a disclaimed interest.

17 9. In any manner not specifically enumerated herein  
18 under a testamentary instrument.

19 (b) Disclaimer may be made for a minor, incompetent,  
20 incapacitated person, or deceased beneficiary by the guardian  
21 or personal representative if the court having jurisdiction of  
22 the estate of the minor, incompetent, incapacitated person, or  
23 deceased beneficiary upon petition finds that the disclaimer:

24 1. Is in the best interests of those interested in the  
25 estate of the beneficiary and of those who take the

26 beneficiary's interest by virtue of the disclaimer and

27 2. Is not detrimental to the best interests of the  
28 beneficiary.

29

30 ~~The determination shall be made on a petition filed for that~~  
31 ~~purpose and served on all interested persons.~~ If ordered by



1 the court, the guardian or personal representative shall  
2 execute and record the disclaimer on behalf of the beneficiary  
3 within the time and in the manner in which the beneficiary  
4 could disclaim if ~~he or she were~~ living, of legal age, and  
5 competent.

6 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

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

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

31

1 (4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER  
2 INSTRUMENTS.--

3 (a) ~~To be~~ A disclaimer shall be in, a writing and  
4 shall declare the disclaimer and its extent, describe the  
5 interest in property disclaimed, and be executed signed,  
6 ~~witnessed,~~ and acknowledged in the manner provided for the  
7 conveyance of real property.

8 (b) A disclaimer shall be effective and irrevocable  
9 when the instrument is recorded by the clerk where the estate  
10 of the decedent is or has been administered. If no  
11 administration has been commenced, it may be recorded  
12 ~~recording may be made~~ with the clerk of any county where venue  
13 of administration is proper.

14 (c) The person disclaiming shall deliver or mail a  
15 copy of the disclaimer instrument to the personal  
16 representative, trustee, or other person having legal title  
17 to, or possession of, the property in which the disclaimed  
18 interest exists. No representative, trustee, or other person  
19 shall be liable for any otherwise proper distribution or other  
20 disposition made without actual notice of the disclaimer or,  
21 if the disclaimer is waived or barred ~~as hereinafter provided,~~  
22 for any otherwise proper distribution or other disposition  
23 made in reliance on the disclaimer, if the distribution or  
24 disposition is made without actual notice of the facts  
25 constituting the waiver or bar of ~~barring~~ the right to  
26 disclaim.

27 (5) TIME FOR RECORDING DISCLAIMER.--To be effective a  
28 disclaimer shall be recorded at any time after the creation of  
29 the interest, but in any event within 9 months after the event  
30 giving rise to the right to disclaim, including the death of  
31 the decedent; or, if the disclaimant is not finally

1 ascertained as a beneficiary or the disclaimant's interest has  
2 not become indefeasibly fixed both in quality and quantity at  
3 the death of the decedent, then the disclaimer shall be  
4 recorded not later than 6 months after the event that would  
5 cause the ~~him or her~~ to become finally ascertained and his or  
6 ~~her~~ interest to become indefeasibly fixed both in quality and  
7 quantity. However, a disclaimer may be effective if recorded  
8 at any time after the creation of the interest, upon the  
9 written consent of all interested parties as provided in s.  
10 731.302.

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

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

16 1. Making a voluntary assignment or transfer of, a  
17 contract to assign or transfer, or an encumbrance of, an  
18 interest in real or personal property.

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

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

25 (b) The acceptance, assignment, transfer, encumbrance,  
26 or written waiver of the right to disclaim a part of an  
27 interest in property, or the sale pursuant to judicial process  
28 of a part of an interest in property, shall not bar the right  
29 to disclaim any other part of the interest in property.

30 (7) EFFECT OF RESTRAINTS.--The right to disclaim  
31 granted by this section is ~~shall exist~~ irrespective of any

1 limitation imposed on the interest of the disclaimant in the  
2 nature of an express or implied spendthrift provision or  
3 similar restriction.

4 Section 58. Section 732.804, Florida Statutes, is  
5 amended to read:

6 732.804 Provisions relating to disposition of the body  
7 cremation.--Before issuance of letters, any person may carry  
8 out written instructions of the decedent relating to the  
9 decedent's body and funeral and burial arrangements.The fact  
10 that cremation occurred pursuant to a written direction  
11 ~~provision of a will or any written contract~~ signed by the  
12 decedent ~~that the in which he or she expressed the intent that~~  
13 ~~his or her~~ body be cremated is a complete defense to a cause  
14 of action against any person acting or relying on that  
15 direction ~~the personal representative or person providing the~~  
16 ~~services.~~

17 Section 59. Section 732.901, Florida Statutes, is  
18 amended to read:

19 732.901 Production of wills.--

20 (1) The custodian of a will must deposit the will with  
21 the clerk of the court having venue of the estate of the  
22 decedent within 10 days after receiving information that the  
23 testator is dead. The custodian must supply the testator's  
24 date of death or social security number to the clerk upon  
25 deposit. ~~Willful failure to deposit the will with the clerk~~  
26 ~~within the time period specified shall render the custodian~~  
27 ~~responsible for all costs and damages sustained by anyone if~~  
28 ~~the court finds that the custodian had no just or reasonable~~  
29 ~~cause for withholding the deposit of the will.~~

30 (2) Upon ~~By~~ petition and notice ~~of it served on him or~~  
31 ~~her~~, the custodian of any will may be compelled to produce and

1 deposit the will as provided in subsection (1). All costs,  
2 damages, and a reasonable attorney's fee shall be adjudged to  
3 petitioner against the delinquent custodian if the court finds  
4 that the custodian had no just or reasonable cause for failing  
5 to withholding the deposit of the will.

6 Section 60. Section 732.910, Florida Statutes, is  
7 transferred and renumbered as section 765.510, Florida  
8 Statutes.

9 Section 61. Section 732.911, Florida Statutes, is  
10 transferred and renumbered as section 765.511, Florida  
11 Statutes.

12 Section 62. Section 732.912, Florida Statutes, is  
13 transferred and renumbered as section 765.512, Florida  
14 Statutes.

15 Section 63. Section 732.913, Florida Statutes, is  
16 transferred and renumbered as section 765.513, Florida  
17 Statutes.

18 Section 64. Section 732.914, Florida Statutes, is  
19 transferred and renumbered as section 765.514, Florida  
20 Statutes.

21 Section 65. Section 732.915, Florida Statutes, is  
22 transferred and renumbered as section 765.515, Florida  
23 Statutes.

24 Section 66. Section 732.916, Florida Statutes, is  
25 transferred and renumbered as section 765.516, Florida  
26 Statutes.

27 Section 67. Section 732.917, Florida Statutes, is  
28 transferred and renumbered as section 765.517, Florida  
29 Statutes.

30  
31

1           Section 68. Section 732.918, Florida Statutes, is  
2 transferred and renumbered as section 765.518, Florida  
3 Statutes.

4           Section 69. Section 732.9185, Florida Statutes, is  
5 transferred and renumbered as section 765.5185, Florida  
6 Statutes.

7           Section 70. Section 732.919, Florida Statutes, is  
8 transferred and renumbered as section 765.519, Florida  
9 Statutes.

10          Section 71. Section 732.921, Florida Statutes, is  
11 transferred and renumbered as section 765.521, Florida  
12 Statutes.

13          Section 72. Section 732.9215, Florida Statutes, is  
14 transferred and renumbered as section 765.5215, Florida  
15 Statutes.

16          Section 73. Section 732.92155, Florida Statutes, is  
17 transferred and renumbered as section 765.52155, Florida  
18 Statutes.

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

22          Section 75. Section 732.922, Florida Statutes, is  
23 transferred and renumbered as section 765.522, Florida  
24 Statutes.

25          Section 76. Section 733.101, Florida Statutes, is  
26 amended to read:

27           733.101 Venue of probate proceedings.--

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

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

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

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

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

10 (3) Whenever a ~~When any~~ proceeding is filed laying  
11 venue in an improper ~~the wrong~~ county, the court may transfer  
12 the action in the same manner as provided in the Florida Rules  
13 of Civil Procedure. Any action taken by the court or the  
14 parties before the transfer is not affected by ~~because of~~ the  
15 improper venue.

16 Section 77. Subsection (2) of section 733.103, Florida  
17 Statutes, is amended to read:

18 733.103 Effect of probate.--

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

25 Section 78. Section 733.104, Florida Statutes, is  
26 amended to read:

27 733.104 Suspension of statutes of limitation in favor  
28 of the personal representative.--

29 (1) If a person entitled to bring an action dies  
30 before the expiration of the time limited for the commencement  
31 of the action and the cause of action survives, the action may

1 be commenced by that person's ~~his or her~~ personal  
2 representative before the later of the expiration of the time  
3 limited for the commencement of the action or 12 months after  
4 the ~~expiration and within 12 months from the date of the~~  
5 decedent's death.

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

13 Section 79. Section 733.105, Florida Statutes, is  
14 amended to read:

15 733.105 Determination of beneficiaries.--

16 (1) When property passes by intestate succession or  
17 ~~under a will to a person not sufficiently identified in the~~  
18 ~~will is unclear and there is the personal representative is in~~  
19 doubt about:

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

22 (b) The shares and amounts that any person is entitled  
23 to receive,

24  
25 any interested person the personal representative may petition  
26 the court to determine beneficiaries or their shares file a  
27 ~~petition setting forth the names, residences, and post office~~  
28 ~~addresses of all persons in interest, except creditors of the~~  
29 ~~decedent, so far as known or ascertainable by diligent search~~  
30 ~~and inquiry, and the nature of their respective interests,~~  
31 ~~designating those who are believed by the personal~~



1 ~~representative to be minors or incompetents and stating~~  
2 ~~whether those so designated are under legal guardianship in~~  
3 ~~this state. If the personal representative believes that~~  
4 ~~there are, or may be, persons whose names are not known to him~~  
5 ~~or her who have claims against, or interest in, the estate as~~  
6 ~~heirs or devisees, the petition shall so state.~~

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

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

23 Section 80. Subsections (2), (3), and (4) of section  
24 733.106, Florida Statutes, are amended to read:

25 733.106 Costs and attorney's ~~attorney~~ fees.--

26 (2) A person nominated as personal representative ~~of~~  
27 ~~the last known will~~, or any proponent of a the will if the  
28 person so nominated does not act within a reasonable time, if  
29 in good faith justified in offering the will in due form for  
30 probate, shall receive ~~his or her~~ costs and attorney's

31

1 ~~attorney fees from out of~~ the estate even though probate is  
2 denied or revoked ~~he or she is unsuccessful.~~

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

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

12 Section 81. Section 733.107, Florida Statutes, is  
13 amended to read:

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

21 Section 82. Section 733.109, Florida Statutes, is  
22 amended to read:

23 733.109 Revocation of probate.--

24 (1) A proceeding to revoke the probate of a will shall  
25 be brought in the court having jurisdiction over the  
26 administration.Any interested person, including a beneficiary  
27 under a prior will, unless ~~except those~~ barred under s.  
28 733.212 or s. 733.2123, may commence the proceeding, ~~before~~  
29 final discharge of the personal representative, ~~petition the~~  
30 ~~court in which the will was admitted to probate for revocation~~  
31 ~~of probate.~~

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

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

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

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

18           Section 83. Subsection (3) of section 733.201, Florida  
19 Statutes, is amended to read:

20           733.201 Proof of wills.--

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

1           Section 84. Section 733.202, Florida Statutes, is  
2 amended to read:

3           733.202 Petition.--Any interested person may petition  
4 for administration.

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

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

8           ~~(a) A statement of the interest of the petitioner, the~~  
9 ~~petitioner's name and address, and the name and office address~~  
10 ~~of his or her attorney.~~

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

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

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

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

19           ~~(f) A statement of the approximate value and nature of~~  
20 ~~the assets so the clerk can ascertain the amount of the filing~~  
21 ~~fee and the court can determine the amount of any bond~~  
22 ~~authorized by this code.~~

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

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

29           ~~(a) State that after the exercise of reasonable~~  
30 ~~diligence the petitioner is unaware of any unrevoked wills or~~  
31 ~~codicils or, if the petitioner is aware of any unrevoked wills~~

1 ~~or codicils, why the wills or codicils are not being probated,~~  
2 ~~or~~  
3 ~~(b) Otherwise give the facts concerning the will or~~  
4 ~~codicil.~~  
5 ~~(5) In a testate estate, the petition shall:~~  
6 ~~(a) Identify all unrevoked wills and codicils being~~  
7 ~~presented for probate.~~  
8 ~~(b) State that the petitioner is unaware of any other~~  
9 ~~unrevoked will or codicil or, if the petitioner is aware of~~  
10 ~~any other unrevoked will or codicil, why the other will or~~  
11 ~~codicil is not being probated.~~  
12 ~~(c) State that the original of the decedent's last~~  
13 ~~will is in the possession of the court or accompanies the~~  
14 ~~petition or that an authenticated copy of a will probated in~~  
15 ~~another jurisdiction accompanies the petition.~~  
16 Section 85. Section 733.203, Florida Statutes, is  
17 repealed.  
18 Section 86. Subsection (2) of section 733.204, Florida  
19 Statutes, is amended to read:  
20 733.204 Probate of a will written in a foreign  
21 language.--  
22 (2) ~~In admitting the will to probate, the court shall~~  
23 ~~establish its correct English translation. If the original~~  
24 ~~will is not or cannot be filed, a photographic copy of the~~  
25 ~~original will shall be filed. At any time during the~~  
26 ~~administration any interested person may have the correctness~~  
27 ~~of the translation, or any part, redetermined after formal~~  
28 ~~notice to all other interested persons.No personal~~  
29 ~~representative who complies in good faith with the English~~  
30 ~~translation of the will as may then be established by the~~  
31

1 court shall ~~thereafter~~ be held liable for doing ~~as a result of~~  
2 ~~having done~~ so.

3 Section 87. Section 733.205, Florida Statutes, is  
4 amended to read:

5 733.205 Probate of notarial will.--

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

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

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

23 Section 88. Subsection (3) of section 733.206, Florida  
24 Statutes, is amended to read:

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

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

31

1           Section 89. Section 733.207, Florida Statutes, is  
2 amended to read:

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

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

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

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

24           Section 90. Section 733.208, Florida Statutes, is  
25 amended to read:

26           733.208 Discovery of later will.--On the discovery of  
27 a later will or codicil ~~expressly or impliedly revoking the~~  
28 ~~probated will in whole or in part, pending or during~~  
29 ~~administration, any interested person may petition to revoke~~  
30 ~~the probate of the earlier will or to probate the later will~~  
31 ~~or codicil offer the later will for probate. The proceedings~~

1 ~~shall be similar to those for revocation of probate.~~ No later  
2 will or codicil may be offered after the testate or intestate  
3 estate has been completely administered and the personal  
4 representative discharged closing of the estate.

5 Section 91. Section 733.209, Florida Statutes, is  
6 amended to read:

7 733.209 Estates of missing persons.--Any interested  
8 person may petition to administer the estate of a missing  
9 person; however, no personal representative shall be appointed  
10 until the court determines that the missing person is dead.

11 ~~The estates of missing persons shall be administered in the~~  
12 ~~same manner as other estates. A petition for administration~~  
13 ~~of the estate shall request entry of an order declaring the~~  
14 ~~death of a missing person prior to appointing a personal~~  
15 ~~representative and commencing administration.~~

16 Section 92. Section 733.212, Florida Statutes, is  
17 amended to read:

18 733.212 Notice of administration; filing of objections  
19 and claims.--

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

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

31



1           ~~(b) Any objection by an interested person on whom~~  
2 ~~notice was served that challenges the validity of the will,~~  
3 ~~the qualifications of the personal representative, venue, or~~  
4 ~~jurisdiction of the court within the later of 3 months after~~  
5 ~~the date of the first publication of the notice or 30 days~~  
6 ~~after the date of service of a copy of the notice on the~~  
7 ~~objecting person.~~

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

13           ~~(1)(3)~~ The personal representative shall promptly  
14 serve a copy of the notice of administration on the following  
15 persons who are known to the personal representative:

16           (a) The decedent's surviving spouse;

17           (b) Beneficiaries; ~~and~~

18           (c) The trustee of any trust described in s.  
19 733.707(3); and, ~~of which the decedent was grantor~~

20           (d) Persons who may be entitled to exempt property,

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

27           (2) The notice shall state the name of the decedent,  
28 the file number of the estate, the designation and address of  
29 the court in which the proceedings are pending, whether the  
30 estate is testate or intestate, and, if testate, the date of  
31 the will and any codicils, the name and address of the

1 personal representative, and the name and address of the  
2 personal representative's attorney. The notice shall state  
3 that interested persons are required to file with the court  
4 any objection by an interested person on whom the notice was  
5 served which challenges the validity of the will, the  
6 qualifications of the personal representative, venue, or  
7 jurisdiction of the court within 3 months after the date of  
8 service of a copy of the notice of administration on the  
9 objecting person.

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

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

1 ~~on any creditor who has filed a claim as provided in this~~  
2 ~~part; a creditor whose claim has been paid in full; or a~~  
3 ~~creditor whose claim is listed in a personal representative's~~  
4 ~~timely proof of claim if the personal representative notified~~  
5 ~~the creditor of that listing.~~

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

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

18 ~~(5) Objections under paragraph (1)(b), by persons on~~  
19 ~~whom notice was served, that are not filed within the later of~~  
20 ~~3 months after the date of first publication of the notice or~~  
21 ~~30 days after the date of service of a copy of the notice on~~  
22 ~~the objecting person are forever barred.~~

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

28 Section 93. Section 733.2121, Florida Statutes, is  
29 created to read:

30 733.2121 Notice to creditors; filing of claims.--  
31

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

12           (2) Publication shall be once a week for 2 consecutive  
13 weeks, in a newspaper published in the county where the estate  
14 is administered or, if there is no newspaper published in the  
15 county, in a newspaper of general circulation in that county.

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

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

1           (c) If the personal representative in good faith fails  
2 to give notice required by this section, the personal  
3 representative is not liable to any person for the failure.  
4 Liability, if any, for the failure is on the estate.

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

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

16           (4) Claims are barred as provided in ss. 733.702 and  
17 733.710.

18           Section 94. Section 733.2123, Florida Statutes, is  
19 amended to read:

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

31

1           Section 95. Section 733.213, Florida Statutes, is  
2 amended to read:

3           733.213 Probate as prerequisite to judicial petition  
4 ~~for~~ construction of will.--A will may not be construed until  
5 it has been admitted to probate ~~No pleading seeking~~  
6 ~~construction of a will may be maintained until the will has~~  
7 ~~first been probated.~~

8           Section 96. Section 733.301, Florida Statutes, is  
9 amended to read:

10          733.301 Preference in appointment of personal  
11 representative.--

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

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

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

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

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

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

24           1.(a) The surviving spouse.

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

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

30          (2)~~(3)~~ A guardian of the property of a ward who if  
31 competent would be entitled to appointment as, or to select,

1 the ~~a~~ personal representative may exercise the right to select  
2 the personal representative.

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

8 (a) Who works for, or holds public office under, the  
9 court.

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

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

20 ~~(5)(6)~~ After letters have been granted in either a  
21 testate or an intestate estate, if any will is subsequently  
22 admitted to probate the letters shall be revoked and new  
23 letters granted ~~as provided in subsection (1)~~.

24 Section 97. Section 733.302, Florida Statutes, is  
25 amended to read:

26 733.302 Who may be appointed personal  
27 representative.--Subject to the limitations in this part, any  
28 person who is sui juris and ~~who~~ is a resident of Florida at  
29 the time of the death of the person whose estate is to be  
30 administered ~~he or she seeks to administer~~ is qualified to act  
31 as personal representative in Florida. ~~A person who has been~~

1 ~~convicted of a felony or who, from sickness, intemperance, or~~  
2 ~~want of understanding, is incompetent to discharge the duties~~  
3 ~~of a personal representative is not qualified.~~

4 Section 98. Subsections (1) and (2) of section  
5 733.305, Florida Statutes, are amended to read:

6 733.305 Trust companies and other corporations and  
7 associations.--

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

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

24 Section 99. Section 733.306, Florida Statutes, is  
25 amended to read:

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

30 Section 100. Section 733.307, Florida Statutes, is  
31 amended to read:



1           733.307 Succession of administration.--~~The~~ No personal  
2 representative of the estate of a deceased personal  
3 representative is not ~~as such shall be~~ authorized to  
4 administer the estate of the first decedent. On the death of  
5 a ~~the~~ sole or surviving personal representative, the court  
6 shall appoint a successor personal representative to complete  
7 the administration of the estate.

8           Section 101. Section 733.308, Florida Statutes, is  
9 amended to read:

10           733.308 Administrator ad litem.--~~When it is necessary~~  
11 ~~that~~ an estate must be represented and the ~~there is no~~  
12 personal representative is unable to do so ~~of the estate~~, the  
13 court shall appoint an administrator ad litem without bond to  
14 represent the estate in that ~~for that particular~~ proceeding.

15 The fact that the personal representative is seeking  
16 reimbursement for claims against the decedent ~~paid by the~~  
17 ~~personal representative~~ does not require appointment of an  
18 administrator ad litem.

19           Section 102. Section 733.309, Florida Statutes, is  
20 amended to read:

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

1           Section 103. Section 733.310, Florida Statutes, is  
2 created to read:

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

13           Section 104. Section 733.401, Florida Statutes, is  
14 repealed.

15           Section 105. Section 733.402, Florida Statutes, is  
16 amended to read:

17           733.402 Bond of fiduciary ~~personal representative;~~  
18 when required; form.--

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

28           (2) No bond ~~executed by a personal representative or~~  
29 ~~curator~~ shall be void or invalid because of an informality in  
30 it or an informality or illegality in the appointment of the  
31 fiduciary. The bond shall have the same force as if the

1 appointment had been legally made and the bond executed in  
2 proper form.

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

6 (4) On petition by any interested person or on the  
7 court's own motion, the court may waive the requirement of  
8 filing a bond, require a bond, increase or decrease the bond,  
9 or require additional surety.

10 Section 106. Section 733.403, Florida Statutes, is  
11 amended to read:

12 733.403 Amount of bond.--

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

19 ~~(2) On petition by any interested person or on the~~  
20 ~~court's own motion, the court may waive the requirement of~~  
21 ~~filing a bond, require a personal representative or curator to~~  
22 ~~give bond, increase or decrease the bond, or require~~  
23 ~~additional surety.~~

24 Section 107. Section 733.404, Florida Statutes, is  
25 amended to read:

26 733.404 Liability of surety.--No surety for any  
27 personal representative or curator shall be charged beyond the  
28 value of the assets of an estate because of any omission or  
29 mistake in pleading or of false pleading of the personal  
30 representative or curator.

31

1           Section 108. Section 733.405, Florida Statutes, is  
2 amended to read:

3           733.405 Release of surety.--

4           (1) Subject to the limitations of this section, on the  
5 petition of any interested person, the surety is entitled to  
6 be released from liability for the future acts and omissions  
7 of the fiduciary ~~On petitioning the surety, or the personal~~  
8 ~~representative of a surety, on the bond of any personal~~  
9 ~~representative or curator shall be entitled as a matter of~~  
10 ~~right to be released from future liability upon the bond.~~

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

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

20           (4) The original surety ~~or sureties~~ shall remain be  
21 liable in accordance with the terms of its original bond for  
22 all acts and omissions of the fiduciary which occur prior to  
23 ~~personal representative or surety until he or she has given~~  
24 the approval of the new surety and filing and approval of the  
25 ~~bond and, after the giving of the new bond, shall remain~~  
26 ~~liable for all the principal's acts to the time of the filing~~  
27 ~~and approval of the new bond.~~ The new surety shall be liable  
28 on its bond ~~for the principal's acts~~ only after the filing and  
29 approval of the new bond.

30           Section 109. Section 733.406, Florida Statutes, is  
31 amended to read:

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

15           Section 110. Section 733.501, Florida Statutes, is  
16 amended to read:

17           733.501 Curators.--

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

1 ~~to deliver them to the curator. The order may be enforced by~~  
2 ~~contempt.~~

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

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

11 ~~(2)(4) Bond shall be required of the curator as the~~  
12 ~~court deems necessary to secure the property. No bond shall~~  
13 ~~be required of banks and trust companies as curators.~~

14 ~~(5) The curator shall file an inventory of the~~  
15 ~~property within 20 days. When the personal representative~~  
16 ~~qualifies, the curator shall immediately account and deliver~~  
17 ~~all assets of the estate in his or her hands to the personal~~  
18 ~~representative within 20 days, and in default shall be subject~~  
19 ~~to the provisions of this code relating to removal of personal~~  
20 ~~representatives.~~

21 ~~(3)(6) Curators shall be allowed reasonable~~  
22 ~~compensation for their services and the court may consider the~~  
23 ~~provisions of s. 733.617.~~

24 ~~(4) Curators shall be subject to removal and~~  
25 ~~surcharge.~~

26 Section 111. Section 733.502, Florida Statutes, is  
27 amended to read:

28 733.502 Resignation of personal representative.--A  
29 personal representative may resign and be relieved of his or  
30 her office. Notice of the petition shall be given to all  
31 interested persons. Before relieving the personal

1 ~~representative from his or her duties and obligations, the~~  
2 ~~court shall require the personal representative to file a true~~  
3 ~~and correct account of his or her administration and deliver~~  
4 ~~to his or her successor or to his or her joint personal~~  
5 ~~representative all of the property of the decedent and all~~  
6 ~~records concerning the estate. After notice to all interested~~  
7 ~~persons, the court may accept the resignation and then revoke~~  
8 ~~the letters of the resigning personal representative if the~~  
9 ~~interests of the estate are not jeopardized by the~~  
10 ~~resignation.~~The acceptance of the resignation, after  
11 ~~compliance with this section, shall not exonerate the any~~  
12 ~~personal representative or the his or her surety from~~  
13 ~~liability previously incurred.~~

14 Section 112. Section 733.503, Florida Statutes, is  
15 amended to read:

16 733.503 Appointment of successor upon  
17 resignation.--When the personal representative's resignation  
18 is accepted, the court shall appoint a personal representative  
19 or shall appoint a curator to serve until a successor personal  
20 representative is appointed ~~If there is no joint personal~~  
21 ~~representative, a successor must be appointed and qualified~~  
22 ~~before a personal representative may be relieved of his or her~~  
23 ~~duties and obligations as provided in s. 733.502.~~

24 Section 113. Section 733.5035, Florida Statutes, is  
25 created to read:

26 733.5035 Surrender of assets after resignation.--When  
27 the resignation has been accepted by the court, all estate  
28 assets, records, documents, papers, and other property of or  
29 concerning the estate in the resigning personal  
30 representative's possession or control shall immediately be  
31 surrendered to the successor fiduciary. The court may

1 establish the conditions and specify the assets and records,  
2 if any, that the resigning personal representative may retain  
3 until the final accounting of the resigning personal  
4 representative has been approved.

5 Section 114. Section 733.5036, Florida Statutes, is  
6 created to read:

7 733.5036 Accounting and discharge following  
8 resignation.--

9 (1) A resigning personal representative shall file and  
10 serve a final accounting of the personal representative's  
11 administration.

12 (2) After determination and satisfaction of the  
13 liability, if any, of the resigning personal representative,  
14 after compensation of the personal representative and the  
15 attorney and other persons employed by the personal  
16 representative, and upon receipt of evidence that  
17 undistributed estate assets have been delivered to the  
18 successor fiduciary, the personal representative shall be  
19 discharged, the bond released, and the surety discharged.

20 Section 115. Section 733.504, Florida Statutes, is  
21 amended to read:

22 733.504 ~~Causes of~~ Removal of personal representative;  
23 causes for removal.--A personal representative may be removed  
24 and ~~the his or her~~ letters revoked for any of the following  
25 causes, and the removal shall be in addition to any penalties  
26 prescribed by law:

27 (1) Adjudication of incompetency.

28 (2) Physical or mental incapacity rendering the  
29 personal representative incapable of the discharge of his or  
30 her duties.

31



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

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

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

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

7 (7) Conviction of a felony.

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

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

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

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

24 (12) The personal representative would not now be  
25 entitled to appointment.

26 Section 116. Section 733.505, Florida Statutes, is  
27 amended to read:

28 733.505 Jurisdiction in removal proceedings.--A  
29 petition for removal shall be filed in the court having  
30 jurisdiction of the administration ~~issuing the letters.~~

31

1           Section 117. Section 733.506, Florida Statutes, is  
2 amended to read:

3           733.506 Proceedings for removal.--Proceedings for  
4 removal of a personal representative may be commenced by the  
5 court or upon the petition of an ~~by any~~ interested person ~~or~~  
6 ~~joint personal representative~~. The court shall revoke the  
7 letters of a removed personal representative. The removal of a  
8 personal representative shall not exonerate the removed  
9 personal representative or the removed personal  
10 representative's surety from any liability.

11           Section 118. Section 733.5061, Florida Statutes, is  
12 created to read:

13           733.5061 Appointment of successor upon removal.--When  
14 a personal representative is removed, the court shall appoint  
15 a personal representative or shall appoint a curator to serve  
16 until a successor personal representative is appointed.

17           Section 119. Section 733.507, Florida Statutes, is  
18 repealed.

19           Section 120. Section 733.508, Florida Statutes, is  
20 amended to read:

21           733.508 Accounting and discharge of removed personal  
22 representatives upon removal.--

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

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

1 removed personal representative shall be discharged, the bond  
2 released, and the surety discharged.~~A removed personal~~  
3 ~~representative shall file a full, true, and correct account of~~  
4 ~~his or her administration within 30 days after removal.~~

5 Section 121. Section 733.509, Florida Statutes, is  
6 amended to read:

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

18 Section 122. Section 733.601, Florida Statutes, is  
19 amended to read:

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

1           Section 123. Section 733.602, Florida Statutes, is  
2 amended to read:

3           733.602 General duties.--

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

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

30           Section 124. Section 733.603, Florida Statutes, is  
31 amended to read:

1           733.603 Personal representative to proceed without  
2 court order.--A personal representative shall proceed  
3 expeditiously with the settlement and distribution of a  
4 decedent's estate and, except as otherwise specified by this  
5 code or ordered by the court, shall do so without  
6 adjudication, order, or direction of the court. A personal  
7 representative may invoke the jurisdiction of the court to  
8 resolve ~~judicial~~ questions concerning the estate or its  
9 administration.

10           Section 125. Section 733.604, Florida Statutes, is  
11 amended to read:

12           733.604 Inventory.--

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

26           ~~(b) The initial opening of any safe deposit box of the~~  
27 ~~decedent must be conducted in the presence of an employee of~~  
28 ~~the institution where the box is located and the personal~~  
29 ~~representative. The inventory of the contents of the box also~~  
30 ~~must be conducted in the presence of the employee and the~~  
31 ~~personal representative, each of whom must verify the contents~~

1 ~~of the box by signing a copy of the inventory. The personal~~  
2 ~~representative shall file the safe-deposit box inventory with~~  
3 ~~the court within 10 days after the box is opened.~~

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

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

26 ~~(3)(4)~~ Upon written request to the personal  
27 representative, a beneficiary shall be furnished a written  
28 explanation of how the inventory value for an asset was  
29 determined, or, if an appraisal was obtained, a copy of the  
30 appraisal, as follows:  
31

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

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

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

23           Section 126. Section 733.605, Florida Statutes, is  
24 repealed.

25           Section 127. Section 733.6065, Florida Statutes, is  
26 created to read:

27           733.6065 Opening safe-deposit box.--

28           (1) Subject to the provisions of s. 655.936, the  
29 initial opening of the decedent's safe-deposit box shall be  
30 conducted in the presence of any two of the following persons:  
31 an employee of the institution where the box is located, the

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

13 (2) The right to open and examine the contents of a  
14 safe-deposit box leased by a decedent, or any other documents  
15 delivered by a decedent for safekeeping, and to receive items  
16 as provided for in s. 655.935 are in addition to the rights  
17 provided in subsection (1).

18 Section 128. Section 733.607, Florida Statutes, is  
19 amended to read:

20 733.607 Possession of estate.--

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



1 purposes of administration, in any action against the  
2 beneficiary for possession of it. The personal representative  
3 shall take all steps reasonably necessary for the management,  
4 protection, and preservation of the estate until distribution  
5 and. ~~He or she~~ may maintain an action to recover possession of  
6 property or to determine the title to it.

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

16 Section 129. Section 733.608, Florida Statutes, is  
17 amended to read:

18 733.608 General power of the personal  
19 representative.--

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

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

28 (b)~~(2)~~ To enforce contribution and equalize  
29 advancement.

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

31

1           (2) If property that reasonably appears to the  
2 personal representative to be protected homestead is not in  
3 the possession of a person who appears to have an interest in  
4 the property, the personal representative is authorized, but  
5 not required, to take possession of that property for the  
6 limited purpose of preserving, insuring, and protecting it for  
7 the heir or devisee, pending a determination of its homestead  
8 status. If the personal representative takes possession of  
9 that property, any rents and revenues may be collected by the  
10 personal representative for the account of the heir or  
11 devisee, but the personal representative shall have no duty to  
12 rent or otherwise make the property productive.

13           Section 130. Section 733.609, Florida Statutes, is  
14 amended to read:

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

1           Section 131. Section 733.610, Florida Statutes, is  
2 amended to read:

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

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

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

16           Section 132. Section 733.611, Florida Statutes, is  
17 amended to read:

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

1 proceedings leading to the issuance of letters, including a  
2 case in which the alleged decedent is alive. This protection  
3 is in addition to any protection afforded by ~~The protection~~  
4 ~~here expressed is not by substitution for that provided in~~  
5 comparable provisions of the laws relating to commercial  
6 transactions and laws simplifying transfers of securities by  
7 fiduciaries.

8 Section 133. Section 733.612, Florida Statutes, is  
9 amended to read:

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

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

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

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

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

- 1           (3) Receive assets from fiduciaries or other sources.
- 2           (4) Invest funds as provided in ss. 518.10-518.14,  
3 considering the amount to be invested, liquidity needs of the  
4 estate, and the time until distribution will be made ~~if funds~~  
5 ~~are not needed to meet debts and expenses currently payable~~  
6 ~~and are not immediately distributable, deposit or invest~~  
7 ~~liquid assets of the estate, including moneys received from~~  
8 ~~the sale of other assets, in federally insured~~  
9 ~~interest-bearing accounts, readily marketable secured loan~~  
10 ~~arrangements, or other prudent investments that would be~~  
11 ~~reasonable for use by trustees.~~
- 12           (5) Acquire or dispose of an asset, excluding real  
13 property in this or another state, for cash or on credit and  
14 at public or private sale, and manage, develop, improve,  
15 exchange, partition, or change the character of an estate  
16 asset.
- 17           (6) Make ordinary or extraordinary repairs or  
18 alterations in buildings or other structures; demolish  
19 improvements; or erect new party walls or buildings.
- 20           (7) Enter into a lease, as lessor or lessee, for a  
21 term within, or extending beyond, the period of  
22 administration, with or without an option to renew.
- 23           (8) Enter into a lease or arrangement for exploration  
24 and removal of minerals or other natural resources or enter  
25 into a pooling or unitization agreement.
- 26           (9) Abandon property when it is valueless or so  
27 encumbered, or in a such condition, that it is of no benefit  
28 to the estate.
- 29           (10) Vote, or refrain from voting, stocks or other  
30 securities in person or by general or limited proxy.
- 31

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

19           Section 134. Section 733.6121, Florida Statutes, is  
20 amended to read:

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

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

30  
31



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

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

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

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

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

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

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

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

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

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

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

23 Section 135. Section 733.613, Florida Statutes, is  
24 amended to read:

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

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

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

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

23 (3) In a sale or mortgage that occurs under a specific  
24 power to sell or mortgage real property, or under a court  
25 order authorizing or confirming that act, the purchaser or  
26 lender takes title free of claims of creditors of the estate  
27 and entitlements of estate beneficiaries, except that existing  
28 mortgages or other liens against real property are not  
29 affected.

30 Section 136. Section 733.614, Florida Statutes, is  
31 amended to read:

1           733.614 Powers and duties of successor personal  
2 representative.--A successor personal representative has the  
3 same power and duty as the original personal representative to  
4 complete the administration and distribution of the estate as  
5 expeditiously as possible, but ~~he or she~~ shall not exercise  
6 any power made personal to the personal representative named  
7 in the will without court approval.

8           Section 137. Section 733.615, Florida Statutes, is  
9 amended to read:

10           733.615 Joint personal representatives; when joint  
11 action required.--

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

30           (2) Where action by a majority of the joint personal  
31 representatives appointed is authorized, a joint personal

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

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

21 Section 138. Section 733.616, Florida Statutes, is  
22 amended to read:

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

1           Section 139. Section 733.617, Florida Statutes, is  
2 amended to read:

3           733.617 Compensation of personal representative.--

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

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

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

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

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

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

30           (3) In addition to the previously described aforesaid  
31 commission, a personal representative shall be allowed such

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



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

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

26           (7) Upon petition of any interested person, the court  
27 may increase or decrease the compensation for ordinary  
28 services of the personal representative or award compensation  
29 for extraordinary services if the facts and circumstances of  
30 the particular administration warrant. In determining  
31 reasonable compensation, the court shall consider all of the

1 following factors, giving weight to each as it determines  
2 appropriate ~~The compensation for a personal representative as~~  
3 ~~set forth in subsections (2) and (3) may, upon petition of any~~  
4 ~~interested person, be increased or decreased by the court. In~~  
5 ~~determining whether to increase or decrease the compensation~~  
6 ~~for ordinary services, the court must consider each of the~~  
7 ~~following factors, giving each such weight as it determines to~~  
8 ~~be appropriate:~~

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

11 (b) The responsibilities assumed by and the potential  
12 liabilities of the personal representative;

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

15 (d) The benefits or detriments resulting to the estate  
16 or interested persons ~~its beneficiaries~~ from the personal  
17 representative's services;

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

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

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

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

29 (i) Any other relevant factors.

30 Section 140. Section 733.6171, Florida Statutes, is  
31 amended to read:

1           733.6171 Compensation of attorney for the personal  
2 representative.--

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

1 | privileges, deduction of last illness expenses, fiscal year  
2 | planning, distribution planning, asset basis considerations,  
3 | handling income or deductions in respect of a decedent,  
4 | valuation discounts, special use and other valuation, handling  
5 | employee benefit or retirement proceeds, prompt assessment  
6 | request, or request for release of personal liability for  
7 | payment of tax.

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

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

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

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

26 |         (h) Legal advice regarding claims for damage to the  
27 | environment or related procedures.

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

31 |

1           (j) Involvement in fiduciary, employee, or attorney  
2 compensation disputes.

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

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

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

15           (b) The responsibilities assumed by, ~~and~~ the potential  
16 liabilities of, ~~the~~ attorney.

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

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

22           (e) The complexity or simplicity of the administration  
23 and the novelty of issues presented.

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

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

31

1 (h) Any delay in payment of the compensation after the  
2 services were furnished.

3 (i) Any other relevant factors.

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

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

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

31

1           ~~(9) The amount and manner of determining compensation~~  
2 ~~for attorneys for personal representatives must be disclosed~~  
3 ~~in the final accounting, unless the disclosure is waived in~~  
4 ~~writing signed by the parties bearing the impact of the~~  
5 ~~compensation and filed with the court. No such waiver shall~~  
6 ~~be valid unless it contains language declaring that the~~  
7 ~~waiving party has actual knowledge of the amount and manner of~~  
8 ~~determining such compensation and, in addition, expressly~~  
9 ~~acknowledging either one of the following two elements:~~

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

13           ~~(b) That the waiving party has the right under~~  
14 ~~subsection (5) to petition the court to decrease such~~  
15 ~~compensation and is waiving that right.~~

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

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

26           Section 141. Section 733.6175, Florida Statutes, is  
27 amended to read:

28           733.6175 Proceedings for review of employment of  
29 agents and compensation of personal representatives and  
30 employees of estate.--

31



1           (1) The court may review the propriety of the  
2 employment of any person employed by the personal  
3 representative and the reasonableness of any compensation paid  
4 to that person or to the personal representative.

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

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

28           (4) The court may determine reasonable compensation  
29 for the personal representative or any person employed by the  
30 personal representative without receiving expert testimony.  
31 Any party may offer expert testimony after notice to

1 interested persons. If expert testimony is offered, a  
2 reasonable expert witness fee shall be awarded by the court  
3 and paid from the assets of the estate. The court shall direct  
4 from what part of the estate the fee shall be paid.

5 Section 142. Section 733.619, Florida Statutes, is  
6 amended to read:

7 733.619 Individual liability of personal  
8 representative.--

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

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

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

29 (4) Issues of liability as between the estate and the  
30 personal representative individually may be determined in a  
31

1 proceeding for accounting, surcharge, or indemnification, or  
2 other appropriate proceeding.

3 Section 143. Section 733.701, Florida Statutes, is  
4 amended to read:

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

10 Section 144. Section 733.702, Florida Statutes, is  
11 amended to read:

12 733.702 Limitations on presentation of claims.--

13 (1) If not barred by s. 733.710, no claim or demand  
14 against the decedent's estate that arose before the death of  
15 the decedent, including claims of the state and any of its  
16 subdivisions, even if the claims are unmatured, contingent,  
17 ~~whether due or not, direct or contingent, or liquidated or~~  
18 ~~unliquidated~~; no claim for funeral or burial expenses; no  
19 claim for personal property in the possession of the personal  
20 representative; and no claim for damages, including, but not  
21 limited to, an action founded on fraud or another wrongful act  
22 or omission of the decedent, is binding on the estate, on the  
23 personal representative, or on any beneficiary unless filed in  
24 the probate proceeding within the later of 3 months after the  
25 time of the first publication of the notice to creditors ~~of~~  
26 ~~administration~~ or, as to any creditor required to be served  
27 with a copy of the notice to creditors ~~of administration~~, 30  
28 days after the date of service ~~of such copy of the notice~~ on  
29 the creditor, even though the personal representative has  
30 recognized the claim or demand by paying a part of it or  
31 interest on it or otherwise. The personal representative may

1 settle in full any claim without the necessity of the claim  
2 being filed when the settlement has been approved by the  
3 interested persons ~~beneficiaries adversely affected according~~  
4 ~~to the priorities provided in this code and when the~~  
5 ~~settlement is made within the statutory time for filing~~  
6 ~~claims; or, within 3 months after the first publication of the~~  
7 ~~notice of administration, he or she may file a proof of claim~~  
8 ~~of all claims he or she has paid or intends to pay.~~

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

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

30 (4) Nothing in this section affects or prevents:  
31

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

3 (b) To the limits of casualty insurance protection  
4 only, any proceeding to establish liability that ~~of the~~  
5 ~~decedent or the personal representative for which he or she is~~  
6 protected by the casualty insurance.

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

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

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

31

1           ~~(6)~~<sup>(5)</sup> Nothing in this section shall extend the  
2 limitations period set forth in s. 733.710.

3           Section 145. Subsection (2) of section 733.703,  
4 Florida Statutes, is amended to read:

5           733.703 Form and manner of presenting claim.--

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

15           Section 146. Section 733.704, Florida Statutes, is  
16 amended to read:

17           733.704 Amendment of claims.--If a bona fide attempt  
18 to file a claim is made ~~by a creditor~~ but the claim is  
19 defective as to form, the court may permit the amendment of  
20 the claim at any time.

21           Section 147. Section 733.705, Florida Statutes, is  
22 amended to read:

23           733.705 Payment of and objection to claims.--

24           (1) The personal representative shall pay all claims  
25 within 1 year from the date of first publication of notice to  
26 creditors of administration, provided that the time shall be  
27 extended with respect to claims in litigation, unmaturing  
28 claims, and contingent claims for the period necessary to  
29 dispose of those ~~such~~ claims pursuant to subsections~~(4)~~,<sup>(5)</sup>,  
30 ~~(6)~~, ~~and~~ <sup>(7)</sup>, and <sup>(8)</sup>. The court may extend the time for  
31 payment of any claim upon a showing of good cause. No

1 personal representative shall be compelled to pay the debts of  
2 the decedent until after the expiration of 5 months from the  
3 first publication of notice to creditors ~~of administration~~.  
4 If any person brings an action against a personal  
5 representative within the 5 months on any claim to which the  
6 personal representative has not filed an ~~no~~ objection, the  
7 plaintiff shall not receive any costs or attorneys' fees ~~if he~~  
8 ~~or she prevails~~, nor shall the judgment change the class of  
9 the claim for payment under this code.

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

1 serve a copy of the objection constitutes an abandonment of  
2 the objection. For good cause, the court may extend the time  
3 for filing or serving an objection to any claim ~~or may extend~~  
4 ~~the time for serving the objection. The extension of time~~  
5 ~~shall be granted only after notice. Objection to a claim~~  
6 ~~constitutes an objection to an amendment of that claim unless~~  
7 ~~the objection is withdrawn.~~

8 (3) If the objection is filed by a person other than  
9 the personal representative, the personal representative may  
10 apply to the court for an order relieving him or her of the  
11 obligation to defend the estate in an independent action or  
12 for the appointment of the objector as administrator ad litem  
13 to defend the action. Fees for the attorney for the  
14 administrator ad litem may be awarded as provided in s.  
15 733.106(3). If costs or attorney's fees are awarded from or  
16 against the estate, the probate court may charge or apportion  
17 that award as provided in s. 733.106(4).

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



1 subsections of this section shall apply as if a claim for the  
2 item had been filed by the claimant; but if the personal  
3 representative has paid the claim after listing it as to be  
4 paid, issues of liability as between the estate and the  
5 personal representative individually shall be determined in  
6 the manner provided for an item listed as paid.

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

28 (6)~~(5)~~ A claimant may bring an independent action or  
29 declaratory action upon a claim which was not timely filed  
30 pursuant to s. 733.702(1) only if the claimant has been  
31

1 granted an extension of time to file the claim pursuant to s.  
2 733.702(3).

3 (7)~~(6)~~ If an unmatured claim has not become due before  
4 the time for distribution of an estate, the personal  
5 representative may prepay the full amount of principal plus  
6 accrued interest due on the claim, without discount and  
7 without penalty, regardless of any prohibition against  
8 prepayment or provision for penalty in any instrument on which  
9 the claim is founded. If the claim is not prepaid, no order  
10 of discharge may be entered until the creditor and personal  
11 representative have filed an agreement disposing of the claim,  
12 or in the absence of an agreement until the court provides for  
13 payment by one of the following methods:

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

28 (b) Requiring that the claim be adequately secured by  
29 a mortgage, pledge, bond, trust, guaranty, or other security,  
30 as may be determined by the court, the security to remain in  
31 effect until the time ~~that~~ the claim becomes due, and ~~that~~ so

1 much of the security or collateral as is not needed for  
2 payment be distributed ~~thereafter~~ according to law; or

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

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

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

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

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

20 (d) The court provides for payment of the claim upon  
21 the happening of the contingency by one of the methods  
22 described in paragraph (a), paragraph (b), or paragraph (c) of  
23 subsection~~(7)~~~~(6)~~,

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

1 ~~proceeding may be brought against the personal representative~~  
2 ~~on the claim after the time limited above, and any such claim~~  
3 ~~shall thereafter be forever barred without order of court. If~~  
4 ~~an action is brought within the time limited above, a judgment~~  
5 ~~establishing the claim shall give it no priority over claims~~  
6 ~~of the same class to which it belongs.~~

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

18 ~~(10)(9) The court may determine all issues concerning~~  
19 ~~claims or matters not requiring trial by jury.~~

20 ~~(11)(10) An order for extension of time authorized~~  
21 ~~under this section may be entered only in the estate~~  
22 ~~administration proceeding.~~

23 Section 148. Section 733.707, Florida Statutes, is  
24 amended to read:

25 733.707 Order of payment of expenses and  
26 obligations.--

27 (1) The personal representative shall pay the expenses  
28 of the administration and obligations of the decedent's estate  
29 in the following order:

30  
31

1 (a) Class 1.--Costs, expenses of administration, and  
2 compensation of personal representatives and their attorneys'  
3 fees and attorney's fees awarded under s. 733.106(3).

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

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

10 (d) Class 4.--Reasonable and necessary medical and  
11 hospital expenses of the last 60 days of the last illness of  
12 the decedent, including compensation of persons attending the  
13 decedent ~~him or her~~.

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

15 (f) Class 6.--Arrearage from court-ordered child  
16 support.

17 (g) Class 7.--Debts acquired after death by the  
18 continuation of the decedent's business, in accordance with s.  
19 733.612(22), but only to the extent of the assets of that  
20 business.

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

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

29 (3) Any portion of a trust with respect to which a  
30 decedent who is the grantor has at the decedent's death a  
31 right of revocation, as defined in paragraph (e), either alone

1 or in conjunction with any other person, is liable for the  
2 expenses of the administration and obligations of the  
3 decedent's estate ~~and enforceable claims of the decedent's~~  
4 ~~creditors~~ to the extent the decedent's estate is insufficient  
5 to pay them as provided in s. 733.607(2).

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

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

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

24 (d) For purposes of this subsection, property held or  
25 received by a trust to the extent that the property would not  
26 have been subject to claims against the decedent's estate if  
27 it had been paid directly to a trust created under the  
28 decedent's will or other than to the decedent's estate, or  
29 assets received from any trust other than a trust described in  
30 this subsection, shall not be deemed assets of the trust  
31

1 available to ~~for the payment of the expenses of administration~~  
2 ~~of and enforceable claims against~~ the decedent's estate.

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

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

8 2. Withdraw or appoint the principal of the trust to  
9 or for the decedent's benefit.

10 Section 149. Section 733.708, Florida Statutes, is  
11 amended to read:

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

24 Section 150. Subsection (1) of section 733.710,  
25 Florida Statutes, is amended to read:

26 733.710 Limitations on claims against estates.--

27 (1) Notwithstanding any other provision of the code, 2  
28 years after the death of a person, neither the decedent's  
29 estate, the personal representative, (if any), nor the  
30 beneficiaries shall be liable for any claim or cause of action

31

1 against the decedent, whether or not letters of administration  
2 have been issued, except as provided in this section.

3 Section 151. Section 733.801, Florida Statutes, is  
4 amended to read:

5 733.801 Delivery of devises and distributive shares.--

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

10 (2) Except as otherwise provided in the will, the  
11 personal representative shall pay as an expense of  
12 administration the reasonable expenses of storage, insurance,  
13 packing, and delivery of tangible personal property to a  
14 beneficiary.

15 Section 152. Subsections (1) and (2) of section  
16 733.802, Florida Statutes, are amended to read:

17 733.802 Proceedings for compulsory payment of devises  
18 or distributive interest.--

19 (1) Before final distribution, no personal  
20 representative shall be compelled:

21 (a) To pay a devise in money before the final  
22 settlement of the personal representative's ~~his or her~~  
23 accounts,

24 (b) To deliver specific personal property devised ~~that~~  
25 ~~may have come into his or her hands~~, unless the personal  
26 property is exempt personal property,

27 (c) To pay all or any part of a distributive share in  
28 the personal estate of a decedent, or

29 (d) To surrender land to any beneficiary,  
30  
31



1 unless the beneficiary establishes ~~files a petition setting~~  
2 ~~forth the facts that entitle him or her to relief and stating~~  
3 that the property will not be required for the payment of  
4 debts, family allowance, estate and inheritance taxes, claims,  
5 elective share of the surviving spouse, charges, or expenses  
6 of administration or to provide ~~for providing~~ funds for  
7 contribution or to enforce ~~enforcing~~ equalization in case of  
8 advancements.

9 (2) An order directing the surrender of real property  
10 or the delivery of personal property by the personal  
11 representative to the beneficiary ~~shall describe the property~~  
12 ~~to be surrendered or delivered.~~ The order shall be conclusive  
13 in favor of bona fide purchasers for value from the  
14 beneficiary or distributee as against the personal  
15 representative and all other persons claiming by, through,  
16 under, or against the decedent or the decedent's estate.

17 Section 153. Section 733.803, Florida Statutes, is  
18 amended to read:

19 733.803 Encumbered property; liability for  
20 payment.--The specific devisee of any encumbered property  
21 shall be entitled to have the encumbrance on devised property  
22 paid at the expense of the residue of the estate only when the  
23 will shows that ~~such an~~ intent. A general direction in the  
24 will to pay debts does not show that ~~such an~~ intent.

25 Section 154. Section 733.805, Florida Statutes, is  
26 amended to read:

27 733.805 Order in which assets abate ~~are~~  
28 ~~appropriated.~~--

29 (1) ~~If a testator makes provision by his or her will,~~  
30 ~~or designates the~~ Funds or property designated by the will  
31 shall ~~to be used, to pay for the payment of debts, estate and~~

1 ~~inheritance taxes~~, family allowance, exempt property, elective  
2 share charges, expenses of administration, and devises, to the  
3 extent the funds or property are ~~they shall be paid out of the~~  
4 ~~funds or from the property or proceeds as provided by the will~~  
5 ~~so far as~~ sufficient. If no provision is made or the  
6 designated any fund or property designated, or if it is  
7 insufficient, the funds and property of the estate shall be  
8 used for these such purposes, ~~except as otherwise provided in~~  
9 ~~s. 733.817 with respect to estate, inheritance, and other~~  
10 ~~death taxes~~, and to raise the shares of a pretermitted spouse  
11 and children, except as otherwise provided in subsections (3)  
12 and (4), in the following order:

13 (a) Property passing by intestacy ~~not disposed of by~~  
14 ~~the will~~.

15 (b) Property devised to the residuary devisee or  
16 devisees.

17 (c) Property not specifically or demonstratively  
18 devised.

19 (d) Property specifically or demonstratively devised.

20 (2) Demonstrative devises shall be classed as general  
21 devises upon the failure or insufficiency of funds or property  
22 out of which payment should be made, to the extent of the  
23 insufficiency. Devises to the decedent's surviving spouse,  
24 given in satisfaction of, or instead of, the surviving  
25 spouse's statutory rights in the estate, shall not abate until  
26 other devises of the same class are exhausted. Devises given  
27 for a valuable consideration shall abate with other devises of  
28 the same class only to the extent of the excess over the  
29 amount of value of the consideration until all others of the  
30 same class are exhausted. Except as herein provided, devises  
31 shall abate equally and ratably and without preference or

1 priority as between real and personal property. When property  
2 that has been specifically devised or charged with a devise is  
3 sold or used ~~taken~~ by the personal representative, other  
4 devisees shall contribute according to their respective  
5 interests to the devisee whose devise has been sold or used  
6 taken, and ~~before distribution the court shall determine~~ The  
7 amounts of the respective contributions shall be determined by  
8 the court, and ~~they~~ shall be paid or withheld before  
9 distribution is made.

10 (3) Section 733.817 shall be applied before this  
11 section is applied.

12 (4) In determining the contribution required under s.  
13 733.607(2), subsections (1)-(3) of this section and s.  
14 737.3054(2) shall be applied as if the beneficiaries of the  
15 estate and the beneficiaries of a trust described in s.  
16 733.707(3), other than the estate or trust itself, were taking  
17 under a common instrument.

18 Section 155. Section 733.806, Florida Statutes, is  
19 amended to read:

20 733.806 Advancement.--If a person dies intestate ~~as to~~  
21 ~~all his or her estate~~, property that the decedent gave during  
22 ~~in his or her~~ lifetime to an heir is treated as an advancement  
23 against the heir's ~~latter's~~ share of the estate only if  
24 declared in a contemporaneous writing by the decedent or  
25 acknowledged in writing by the heir. The property advanced  
26 shall be valued at the time the heir came into possession or  
27 enjoyment of the property or at the time of the death of the  
28 decedent, whichever first occurs. If the recipient of the  
29 property does not survive the decedent, the property shall not  
30 be taken into account in computing the intestate share to be  
31

1 received by the recipient's descendants unless the declaration  
2 or acknowledgment provides otherwise.

3 Section 156. Subsections (3), (4), (5), and (6) of  
4 section 733.808, Florida Statutes, are amended to read:

5 733.808 Death benefits; disposition of proceeds.--

6 (3) In the event no trustee makes proper claim to the  
7 proceeds from the insurance company or other obligor within a  
8 period of 6 months after the date of the death of the insured,  
9 employee, or annuitant, or if satisfactory evidence is  
10 furnished to the insurance company or ~~such~~ obligor within that  
11 period that there is, or will be, no trustee to receive the  
12 proceeds, payment shall be made by the insurance company or  
13 obligor to the personal representative of the person making  
14 the ~~such~~ designation, unless otherwise provided by agreement  
15 with the insurer or ~~other~~ obligor during the lifetime of the  
16 insured, employee, or annuitant.

17 (4) Death benefits payable as provided in subsection  
18 (1), subsection (2), or subsection (3), unless paid to a  
19 personal representative under the provisions of subsection  
20 (3), shall not be deemed to be part of the decedent's estate  
21 ~~of the testator or an intestate estate~~, and shall not be  
22 subject to any obligation to pay the expenses of the  
23 administration and obligations of the decedent's estate or for  
24 contribution required from a trust under s. 733.607(2)  
25 ~~transfer or estate taxes, debts, or other charges enforceable~~  
26 ~~against the estate~~ to any greater extent than if the ~~such~~  
27 proceeds were payable directly to the beneficiaries named in  
28 the trust.

29 (5) The death benefits ~~so~~ held in trust may be  
30 commingled with any other assets that may properly come into  
31 the trust.

1           (6) Nothing in this section shall affect the validity  
2 of any designation of a beneficiary of proceeds previously  
3 ~~heretofore~~ made that designates as beneficiary the trustee of  
4 any trust established under a trust agreement or declaration  
5 of trust or by will.

6           Section 157. Section 733.809, Florida Statutes, is  
7 amended to read:

8           733.809 Right of retainer.--The amount of a  
9 noncontingent indebtedness due from ~~of~~ a beneficiary to the  
10 estate, ~~if due,~~ or its present value, if not due, may be  
11 offset against that ~~the~~ beneficiary's interest. However, that,  
12 ~~but the~~ beneficiary shall have ~~has~~ the benefit of any defense  
13 that would be available ~~to him or her~~ in a direct proceeding  
14 for recovery of the debt.

15           Section 158. Section 733.810, Florida Statutes, is  
16 amended to read:

17           733.810 Distribution in kind; valuation.--

18           (1) Assets shall be distributed in kind unless:

19           (a) A general power of sale is conferred;

20           (b) A contrary intention is indicated by the will or  
21 trust; or

22           (c) Disposition is made otherwise under the provisions  
23 of this code. ~~Unless a general power of sale is conferred or a~~  
24 ~~contrary intention is indicated by the will or unless assets~~  
25 ~~are otherwise disposed of under the provisions of this code,~~  
26 ~~the distributable assets of a decedent's estate shall be~~  
27 ~~distributed in kind through application of the following~~  
28 ~~provisions:~~

29           (2) ~~(a)~~ Any pecuniary devise, family allowance, or  
30 other pecuniary share of the estate or trust or devise payable  
31 in money may be satisfied by value in kind if:

1           ~~(a)1.~~ The person entitled to ~~the~~ payment has not  
2 demanded cash;

3           ~~(b)2.~~ The property is distributed ~~in kind is~~ valued at  
4 fair market value as ~~of the date~~ of its distribution date; and

5           ~~(c)3.~~ No residuary devisee has requested that the  
6 asset remain a part of the residuary ~~residue of the~~ estate.

7           ~~(3)(b)~~ When ~~it is~~ not practicable to distribute  
8 undivided interests in a residuary asset property, the asset  
9 may property ~~shall be~~ sold ~~converted into cash for~~  
10 ~~distribution.~~

11           ~~(4)(2)~~ When the ~~personal representative, trustee, or~~  
12 ~~other~~ fiduciary under a will or trust instrument is required  
13 ~~to~~, or has an option, ~~to~~, satisfy a pecuniary devise or  
14 transfer in trust, ~~to~~, or for the benefit of, ~~the~~ surviving  
15 spouse, ~~with an in-kind distribution assets of the estate or~~  
16 ~~trust in kind~~, at values as finally determined for federal  
17 estate tax purposes, the ~~personal representative, trustee, or~~  
18 ~~other~~ fiduciary shall, unless the governing will or trust  
19 instrument otherwise provides, satisfy the devise or transfer  
20 in trust by distribution of assets, including cash, fairly  
21 representative of the appreciated or depreciated value of all  
22 property available for that distribution ~~in satisfaction of~~  
23 ~~the devise or transfer in trust~~, taking into consideration any  
24 gains and losses realized from a prior ~~the sale, prior to~~  
25 ~~distribution of the marital interest~~, of any property not  
26 devised specifically, generally, or demonstratively ~~devised~~.

27           ~~(5)(3)~~ ~~With the consent of all beneficiaries affected,~~  
28 A personal representative or a trustee is authorized to  
29 distribute any distributable assets, non-pro rata among the  
30 beneficiaries subject to the fiduciary's duty of impartiality  
31 ~~entitled thereto.~~

1           Section 159. Section 733.811, Florida Statutes, is  
2 amended to read:

3           733.811 Distribution; right or title of  
4 distributee.--If a distributee receives from a fiduciary an  
5 instrument transferring assets in kind, payment in  
6 distribution, or possession of specific property, the  
7 distributee has succeeded to the estate's interest in the  
8 assets as against all persons interested in the estate.  
9 However, the fiduciary may recover the assets or their value  
10 if the distribution was improper ~~Proof that a distributee has~~  
11 ~~received an instrument transferring assets in kind or payment~~  
12 ~~in distribution or possession of specific property from a~~  
13 ~~personal representative is conclusive evidence that the~~  
14 ~~distributee has succeeded to the interest of the estate in the~~  
15 ~~distributed assets, as against all persons interested in the~~  
16 ~~estate, but the personal representative may recover the assets~~  
17 ~~or their value if the distribution was improper.~~

18           Section 160. Section 733.812, Florida Statutes, is  
19 amended to read:

20           733.812 Improper distribution or payment; liability of  
21 distributee or payee.--~~Unless the distribution or payment no~~  
22 ~~longer can be questioned because of adjudication, estoppel, or~~  
23 ~~limitations, A distributee of property improperly distributed~~  
24 ~~or paid or a claimant who was paid improperly must paid, if he~~  
25 ~~or she has the property, is liable to return the assets or~~  
26 ~~funds property improperly received, and the income from those~~  
27 ~~assets or interest on the funds its income since distribution~~  
28 ~~or payment, unless the distribution or payment cannot be~~  
29 ~~questioned because of adjudication, estoppel, or limitations~~  
30 ~~to the personal representative or to the beneficiaries~~  
31 ~~entitled to it. If the distributee or claimant he or she does~~

1 not have the property, its ~~then he or she is liable to return~~  
2 ~~the value of the property improperly received~~ at the date of  
3 disposition, and its income thereon, and gain received by the  
4 distributee or claimant must be returned ~~him or her.~~

5 Section 161. Section 733.813, Florida Statutes, is  
6 amended to read:

7 733.813 Purchasers from distributees protected.--If  
8 property distributed in kind, or a security interest in that  
9 property therein, is acquired by a purchaser or lender for  
10 value from a distributee ~~who has received an instrument of~~  
11 ~~distribution or possession from the personal representative,~~  
12 the purchaser or lender takes title free of any claims of the  
13 estate and incurs no personal liability to the estate, whether  
14 or not the distribution was proper. The ~~To be protected under~~  
15 ~~this provision~~ a purchaser or lender need not inquire whether  
16 a personal representative acted properly in making the  
17 distribution in kind.

18 Section 162. Section 733.814, Florida Statutes, is  
19 amended to read:

20 733.814 Partition for purpose of distribution.--When  
21 two or more beneficiaries ~~heirs or devisees~~ are entitled to  
22 distribution of undivided interests in any property, the  
23 personal representative or any beneficiary ~~one or more of the~~  
24 ~~beneficiaries~~ may petition the court before ~~closing~~ the estate  
25 is closed to ~~make partition.~~ ~~After formal notice to the~~  
26 ~~interested beneficiaries,~~ the court shall partition the  
27 property in the same manner as provided by law for civil  
28 actions of partition. The court may direct the personal  
29 representative to sell any property that cannot be partitioned  
30 without prejudice to the owners and that cannot be allotted  
31 equitably and conveniently ~~be allotted to any one party.~~



1           Section 163. Section 733.815, Florida Statutes, is  
2 amended to read:

3           733.815 Private contracts ~~agreements~~ among interested  
4 persons ~~distributees~~.--Subject to the rights of creditors and  
5 taxing authorities, ~~competent~~ interested persons may agree  
6 among themselves to alter the interests, shares, or amounts to  
7 which they are entitled ~~under the will or under the laws of~~  
8 intestacy in a written contract executed by them ~~all who are~~  
9 ~~affected~~. The personal representative shall abide by the terms  
10 of the contract ~~agreement~~, subject to the personal  
11 representative's ~~his or her~~ obligation to administer the  
12 estate for the benefit of interested persons who are not  
13 parties to the contract, and creditors, to pay ~~all taxes and~~  
14 ~~costs of administration, and to carry out the responsibilities~~  
15 ~~of his or her office for the benefit of any beneficiaries of~~  
16 ~~the decedent who are not parties to the agreement. Personal~~  
17 ~~representatives are not required to see to the performance of~~  
18 ~~trusts if the trustee is another person who is willing to~~  
19 ~~accept the trust~~. Trustees of a testamentary trust are  
20 interested persons ~~beneficiaries~~ for the purposes of this  
21 section. Nothing in this section ~~herein~~ relieves trustees of  
22 any duties owed to beneficiaries of trusts.

23           Section 164. Section 733.816, Florida Statutes, is  
24 amended to read:

25           733.816 Disposition of unclaimed property held by  
26 personal representatives.--

27           (1) In all cases in which there is unclaimed property  
28 in the hands of a personal representative that cannot be  
29 distributed or paid because of the inability to find the  
30 lawful owner ~~because of inability to find him or her~~ or  
31 ~~because no lawful owner is known~~ or because the lawful owner

1 refuses to accept the property after a reasonable attempt to  
2 distribute it and after notice to that lawful owner, the court  
3 shall order the personal representative to sell the property  
4 and deposit the proceeds and cash already in hand, after  
5 retaining those amounts provided for in subsection (4), with  
6 the clerk and receive a receipt, and the clerk shall deposit  
7 the funds in the registry of the court to be disposed of as  
8 follows:

9           (a) If the value of the funds is \$500 or less, the  
10 clerk shall post a notice for 30 days at the courthouse door  
11 giving the amount involved, the name of the personal  
12 representative, and the other pertinent information that will  
13 put interested persons on notice.

14           (b) If the value of the funds is over \$500, the clerk  
15 shall publish the notice once a month for 2 consecutive months  
16 in a newspaper of general circulation in the county.

17  
18 After the expiration of 6 months from the posting or first  
19 publication, the clerk shall deposit the funds with the State  
20 Treasurer after deducting the clerk's ~~his or her~~ fees and the  
21 costs of publication.

22           (2) Upon receipt of the funds, the State Treasurer  
23 shall deposit them to the credit of the State School Fund, to  
24 become a part of the school fund. All interest and all income  
25 that may accrue from the money while so deposited shall belong  
26 to the fund. The funds so deposited shall constitute and be a  
27 permanent appropriation for payments by the State Treasurer in  
28 obedience to court orders entered as provided by subsection  
29 (3).

30           (3) Within 10 years from the date of deposit with the  
31 State Treasurer, on written petition to the court that

1 directed the deposit of the funds and informal notice to the  
2 Department of Legal Affairs, and after proof of entitlement  
3 ~~his or her right to them~~, any person entitled to the funds  
4 before or after payment to the State Treasurer and deposit as  
5 provided by subsection (1) may obtain a court ~~an order of~~  
6 ~~court~~ directing the payment of the funds to that person ~~him or~~  
7 ~~her~~. All funds deposited with the State Treasurer and not  
8 claimed within 10 years from the date of deposit shall escheat  
9 to the state for the benefit of the State School Fund.

10 (4) The personal representative depositing assets with  
11 the clerk is permitted to retain from the funds ~~in his or her~~  
12 ~~possession~~ a sufficient amount to pay final costs of  
13 administration chargeable to the assets, ~~including fees~~  
14 ~~allowed pursuant to s. 733.617~~ accruing between the deposit of  
15 the funds with the clerk of the court and the order of  
16 discharge. Any funds so retained which are surplus shall be  
17 deposited with the clerk prior to discharge of the personal  
18 representative.

19 (5)(a) If a person entitled to the funds assigns the  
20 right ~~his or her rights~~ to receive payment or part payment to  
21 an attorney or private investigative agency which is duly  
22 licensed to do business in this state pursuant to a written  
23 agreement with that ~~such~~ person, the Department of Banking and  
24 Finance is authorized to make distribution in accordance with  
25 the ~~such~~ assignment.

26 (b) Payments made to an attorney or private  
27 investigative agency shall be promptly deposited into a trust  
28 or escrow account which is regularly maintained by the  
29 attorney or private investigative agency in a financial  
30 institution located in this state and authorized to accept  
31 these ~~such~~ deposits ~~and located in this state~~.

1 (c) Distribution by the attorney or private  
2 investigative agency to the person entitled to the funds shall  
3 be made within 10 days following final credit of the deposit  
4 into the trust or escrow account at the financial institution,  
5 unless a party to the agreement protests the distribution in  
6 writing ~~such distribution~~ before it is made.

7 (d) The department shall not be civilly or criminally  
8 liable for any funds distributed pursuant to this subsection,  
9 provided the ~~such~~ distribution is made in good faith.

10 Section 165. Subsections (1) and (2), paragraph (a) of  
11 subsection (4), paragraph (c) of subsection (5), subsection  
12 (6), paragraph (a) of subsection (7), and subsection (11) of  
13 section 733.817, Florida Statutes, are amended to read:

14 733.817 Apportionment of estate taxes.--

15 (1) For purposes of this section:

16 (a) "Fiduciary" means a person other than the personal  
17 representative in possession of property included in the  
18 measure of the tax who is liable to the applicable taxing  
19 authority for payment of the entire tax to the extent of the  
20 value of the property in ~~his or her~~ possession.

21 (b) "Governing instrument" means a will, trust  
22 agreement, or any other document that controls the transfer of  
23 an asset on the occurrence of the event with respect to which  
24 the tax is being levied.

25 (c) "Gross estate" means the gross estate, as  
26 determined by the Internal Revenue Code with respect to the  
27 federal estate tax and the Florida estate tax, and as that  
28 ~~such~~ concept is otherwise determined by the estate,  
29 inheritance, or death tax laws of the particular state,  
30 country, or political subdivision whose tax is being  
31 apportioned.

1           (d) "Included in the measure of the tax" means that  
2 for each separate tax that an interest may incur, only  
3 interests included in the measure of that particular tax are  
4 considered. The term "included in the measure of the tax" does  
5 not include any interest, whether passing under the will or  
6 not, to the extent the interest is initially deductible from  
7 the gross estate, without regard to any subsequent reduction  
8 ~~diminution~~ of the deduction by reason of the charge of any  
9 part of the applicable tax to the interest. The term "included  
10 in the measure of the tax" does not include interests or  
11 amounts that are not included in the gross estate but are  
12 included in the amount upon which the applicable tax is  
13 computed, such as adjusted taxable gifts with respect to the  
14 federal estate tax. If an election is required for  
15 deductibility, an interest is not "initially deductible"  
16 unless the election for deductibility is allowed.

17           (e) "Internal Revenue Code" means the Internal Revenue  
18 Code of 1986, as amended from time to time.

19           (f) "Net tax" means the net tax payable to the  
20 particular state, country, or political subdivision whose tax  
21 is being apportioned, after taking into account all credits  
22 against the applicable tax except as provided in this section.  
23 With respect to the federal estate tax, "net tax" is  
24 determined after taking into account all credits against the  
25 tax except for the credit for foreign death taxes.

26           (g) "Nonresiduary devise" means any devise that is not  
27 a residuary devise.

28           (h) "Nonresiduary interest" in connection with a trust  
29 means any interest in a trust which is not a residuary  
30 interest.

31

1 (i) "Recipient" means, with respect to property or an  
2 interest in property included in the gross estate, an heir at  
3 law in an intestate estate, devisee in a testate estate,  
4 beneficiary of a trust, beneficiary of an insurance policy,  
5 annuity, or other contractual right, surviving tenant, taker  
6 as a result of the exercise or in default of the exercise of a  
7 general power of appointment, person who receives or is to  
8 receive the property or an interest in the property, or person  
9 in possession of the property, other than a creditor.

10 (j) "Residuary devise" has the meaning set forth in s.  
11 731.201(31)~~(30)~~.

12 (k) "Residuary interest," in connection with a trust,  
13 means an interest in the assets of a trust which remain after  
14 provision for any distribution that is to be satisfied by  
15 reference to a specific property or type of property, fund,  
16 sum, or statutory amount.

17 (l) "Revocable trust" means a trust as described in s.  
18 733.707(3)~~as defined in s. 731.201(33) created by the~~  
19 ~~decedent to the extent that the decedent had at his or her~~  
20 ~~death the power to alter, amend, or revoke the trust either~~  
21 ~~alone or in conjunction with any other person.~~

22 (m) "State" means any state, territory, or possession  
23 of the United States, the District of Columbia, and the  
24 Commonwealth of Puerto Rico.

25 (n) "Tax" means any estate tax, inheritance tax,  
26 generation skipping transfer tax, or other tax levied or  
27 assessed under the laws of this or any other state, the United  
28 States, any other country, or any political subdivision of the  
29 foregoing, as finally determined, which is imposed as a result  
30 of the death of the decedent, including, without limitation,  
31 the tax assessed pursuant to s. 4980A of the Internal Revenue

1 Code. The term also includes any interest and penalties  
2 imposed in addition to the tax. Unless the context indicates  
3 otherwise, the term "tax" means each separate tax.

4 (o) "Temporary interest" means an interest in income  
5 or an estate for a specific period of time or for life or for  
6 some other period controlled by reference to extrinsic events,  
7 whether or not in trust.

8 (p) "Tentative Florida tax" with respect to any  
9 property means the net Florida estate tax that would have been  
10 attributable to that property if no tax were payable to any  
11 other state in respect of that property.

12 (q) "Value" means the pecuniary worth of the interest  
13 involved as finally determined for purposes of the applicable  
14 tax after deducting any debt, expense, or other deduction  
15 chargeable to it for which a deduction was allowed in  
16 determining the amount of the applicable tax. A lien or other  
17 encumbrance is not regarded as chargeable to a particular  
18 interest to the extent that it will be paid from other  
19 interests. The value of an interest shall not be reduced by  
20 reason of the charge against it of any part of the tax.

21 (2) An interest in protected homestead ~~property~~ shall  
22 be exempt from the apportionment of taxes ~~if such interest~~  
23 ~~passes to a person to whom inures the decedent's exemption~~  
24 ~~from forced sale under the State Constitution.~~

25 (4)(a) Except as otherwise effectively directed by the  
26 governing instrument, if the Internal Revenue Code including,  
27 but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B,  
28 and 2603, ~~of the Internal Revenue Code~~ applies to apportion  
29 federal tax against recipients of certain interests, all net  
30 taxes, including taxes levied by the state attributable to  
31 each type of interest, shall be apportioned against the

1 recipients of all interests of that type in the proportion  
2 that the value of each interest of that type included in the  
3 measure of the tax bears to the total of all interests of that  
4 type included in the measure of the tax.

5 (5) Except as provided above or as otherwise directed  
6 by the governing instrument, the net tax attributable to each  
7 interest shall be apportioned as follows:

8 (c) The net tax attributable to an interest in  
9 protected homestead property ~~property which is exempt from~~  
10 ~~apportionment pursuant to subsection (2)~~ shall be apportioned  
11 against the recipients of other interests in the estate or  
12 passing under any revocable trust in the following order:

13 1. Class I: Recipients of interests not disposed of  
14 by the decedent's will or revocable trust that ~~which~~ are  
15 included in the measure of the federal estate tax.

16 2. Class II: Recipients of residuary devises and  
17 residuary interests that are included in the measure of the  
18 federal estate tax.

19 3. Class III: Recipients of nonresiduary devises and  
20 nonresiduary interests that are included in the measure of the  
21 federal estate tax. The net tax apportioned to a class, if  
22 any, pursuant to this paragraph shall be apportioned among the  
23 recipients in the class in the proportion that the value of  
24 the interest of each bears to the total value of all interests  
25 included in that class.

26 (6) The personal representative or fiduciary shall not  
27 be required to transfer to a recipient any property ~~in~~  
28 ~~possession of the personal representative or fiduciary which~~  
29 ~~he or she reasonably anticipated to anticipate~~ may be  
30 necessary for the payment of taxes. Further, the personal  
31 representative or fiduciary shall not be required to transfer



1 ~~any property in possession of the personal representative or~~  
2 ~~fiduciary~~ to the recipient until the amount of the tax due  
3 from the recipient is paid by the recipient. If property is  
4 transferred before final apportionment of the tax, the  
5 recipient shall provide a bond or other security for his or  
6 her apportioned liability in the amount and form prescribed by  
7 the personal representative or fiduciary.

8           (7)(a) The personal representative may petition at any  
9 time for an order of apportionment. If no administration has  
10 been commenced at any time after 90 days from the decedent's  
11 death any fiduciary may petition for an order of apportionment  
12 in the court in which venue would be proper for administration  
13 of the decedent's estate. Formal notice of the petition for  
14 order of apportionment shall be given to all interested  
15 persons. At any time after 6 months from the decedent's death,  
16 any recipient may petition the ~~such~~ court for an order of  
17 apportionment.

18           (11) Nothing in this section shall limit the right of  
19 any person who has paid more than the amount of the tax  
20 apportionable to that ~~such~~ person, calculated as if all  
21 apportioned amounts would be collected, to obtain contribution  
22 from those who have not paid the full amount of the tax  
23 apportionable to them, calculated as if all apportioned  
24 amounts would be collected, and that right is hereby  
25 conferred. In any action to enforce contribution, the court  
26 shall award taxable costs as in chancery actions, including  
27 reasonable attorney's fees.

28           Section 166. Section 733.901, Florida Statutes, is  
29 amended to read:

30           733.901 ~~Distribution~~Final discharge.--

31

1           (1) After administration has been ~~When a personal~~  
2 ~~representative has completed the personal representative shall~~  
3 be discharged ~~administration except for distribution, he or~~  
4 ~~she shall file a final accounting and a petition for discharge~~  
5 ~~that shall contain:~~

6           (a) ~~A complete report of all receipts and~~  
7 ~~disbursements since the date of the last annual accounting or,~~  
8 ~~if none, from the commencement of administration.~~

9           (b) ~~A statement that he or she has fully administered~~  
10 ~~the estate by making payment, settlement, or other disposition~~  
11 ~~of all claims and debts that were presented and the expenses~~  
12 ~~of administration.~~

13           (c) ~~The proposed distribution of the assets of the~~  
14 ~~estate.~~

15           (d) ~~Any prior distributions that have been made.~~

16           (e) ~~A statement that objections to this report or~~  
17 ~~proposed distribution of assets be filed within 30 days.~~

18  
19 ~~The final accounting and petition for discharge shall be filed~~  
20 ~~and served on all interested persons within 12 months after~~  
21 ~~issuance of letters for estates not required to file a federal~~  
22 ~~estate tax return, otherwise 12 months from the date the~~  
23 ~~return is due, unless the time is extended by the court for~~  
24 ~~cause shown after notice to interested persons. The petition~~  
25 ~~shall state the status of the estate and the reasons for the~~  
26 ~~extension.~~

27           (2) ~~If no objection to the accounting or petition for~~  
28 ~~discharge has been filed within 30 days from the date of~~  
29 ~~service of copies on interested persons, or if service has~~  
30 ~~been waived, the personal representative may distribute the~~  
31 ~~estate according to the plan of distribution set forth in the~~

1 ~~petition without a court order. The assets shall be~~  
2 ~~distributed free from the claims of any interested person and,~~  
3 ~~upon receipt of evidence that the estate has been properly~~  
4 ~~distributed and that claims of creditors have been paid or~~  
5 ~~otherwise disposed of, the court shall enter an order~~  
6 ~~discharging the personal representative and releasing the~~  
7 ~~surety on any bond.~~

8 ~~(3) If an objection to the petition for discharge has~~  
9 ~~been filed within the time allowed, the court shall determine~~  
10 ~~the plan of distribution and, upon receipt of evidence that~~  
11 ~~the estate has been properly distributed and that claims of~~  
12 ~~creditors have been paid or otherwise disposed of, the court~~  
13 ~~shall enter an order discharging the personal representative~~  
14 ~~and releasing the surety on any bond.~~

15 ~~(4) The final accounting required under subsection (1)~~  
16 ~~may be waived upon a filing of a consent waiver with the~~  
17 ~~court, by all interested persons, acknowledging that they are~~  
18 ~~aware of their rights and that they waive the right to have a~~  
19 ~~final accounting.~~

20 ~~(5) The 30-day period contained in subsection (2) may~~  
21 ~~be waived upon written consent of all interested persons.~~

22 (2)~~(6)~~ The discharge of the personal representative  
23 shall release the personal representative ~~of the estate~~ and  
24 shall bar any action against the personal representative, as  
25 such or individually, and the ~~his or her~~ surety.

26 Section 167. Section 733.903, Florida Statutes, is  
27 amended to read:

28 733.903 Subsequent administration.--The final  
29 settlement of an estate and the discharge of the personal  
30 representative shall not prevent ~~a revocation of the order of~~  
31 ~~discharge or the subsequent issuance of letters if other~~

1 ~~property of the estate is discovered or if it becomes~~  
2 ~~necessary that further administration of the estate be had for~~  
3 ~~any cause. However,~~The order of discharge may not be revoked  
4 ~~under this section~~ based upon the discovery of a will or later  
5 will.

6 Section 168. Subsections (3) and (4) of section  
7 734.101, Florida Statutes, are amended to read:

8 734.101 Foreign personal representative.--

9 (3) Debtors who have not received a written demand for  
10 payment from a personal representative or curator appointed in  
11 this state within 60 days after appointment of a personal  
12 representative in any other state or country, and whose  
13 property in Florida is subject to a mortgage or other lien  
14 securing the debt held by the foreign personal representative,  
15 may pay the foreign personal representative after the  
16 expiration of 60 days from the date of ~~his or her~~ appointment  
17 of the foreign personnel representative. Thereafter, a  
18 satisfaction of the mortgage or lien executed by the foreign  
19 personal representative, with an authenticated copy of the his  
20 ~~or her~~ letters or other evidence of authority attached, may be  
21 recorded in the public records. The satisfaction shall be an  
22 effective discharge of the mortgage or lien, irrespective of  
23 whether the debtor making payment had received a written  
24 demand before paying the debt.

25 (4) All persons indebted to the estate of a decedent,  
26 or having possession of personal property belonging to the  
27 estate, who have received no written demand from a personal  
28 representative or curator appointed in this state for payment  
29 of the debt or the delivery of the property are authorized to  
30 pay the debt or to deliver the personal property to the  
31 foreign personal representative after the expiration of 60

1 days from the date of ~~his or her~~ appointment of the foreign  
2 personnel representative.

3 Section 169. Section 734.102, Florida Statutes, is  
4 amended to read:

5 734.102 Ancillary administration.--

6 (1) If a nonresident of this state dies leaving assets  
7 in this state, credits due ~~him or her~~ from residents in this  
8 state, or liens on property in this state, a personal  
9 representative specifically designated in the decedent's will  
10 to administer the Florida property shall be entitled to have  
11 ancillary letters issued ~~to him or her~~, if qualified to act in  
12 Florida. Otherwise, the foreign personal representative of the  
13 decedent's estate shall be entitled to have letters issued ~~to~~  
14 ~~him or her~~, if qualified to act in Florida. If the foreign  
15 personal representative is not qualified to act in Florida and  
16 the will names an alternate or successor who is qualified to  
17 act in Florida, the alternate or successor shall be entitled  
18 to have letters issued ~~to him or her~~. Otherwise, those  
19 entitled to a majority interest of the Florida property may  
20 have letters issued to a personal representative selected by  
21 them who is qualified to act in Florida. If the decedent dies  
22 intestate and the foreign ~~domiciliary~~ personal representative  
23 is not qualified to act in Florida, the order of preference  
24 for appointment of a personal representative as prescribed in  
25 this code shall apply. If ancillary letters are applied for  
26 by other than the domiciliary personal representative, prior  
27 notice shall be given to any domiciliary personal  
28 representative.

29 (2) Ancillary administration shall be commenced as  
30 provided by the Florida Probate Rules.~~To entitle the~~  
31 ~~applicant to ancillary letters, an authenticated copy of so~~

1 ~~much of the domiciliary proceedings shall be filed as will~~  
2 ~~show either:~~

3 ~~(a) The will, petition for probate, order admitting~~  
4 ~~the will to probate, and letters, if there are such; or~~

5 ~~(b) The petition for letters and the letters.~~

6 (3) ~~On filing the authenticated copy of a probated~~  
7 ~~will, including any probated codicils, the court shall~~  
8 ~~determine~~ If the will and any the codicils are executed as  
9 required by the code, they shall be admitted to probate if  
10 any, comply with s. 732.502(1) or s. 732.502(2). ~~If they~~  
11 ~~comply, the court shall admit the will and any codicils to~~  
12 ~~record.~~

13 (4) The ancillary personal representative shall give  
14 bond as do personal representatives generally. All  
15 proceedings for appointment and administration of the estate  
16 shall be as similar to those in original administrations as  
17 possible.

18 (5) Unless creditors' claims are otherwise barred by  
19 s. 733.710, the ancillary personal representative shall cause  
20 a notice to creditors to be served and published according to  
21 the requirements of chapter 733. Claims not filed in  
22 accordance with chapter 733 shall be barred as provided in s.  
23 733.702.

24 (6)~~(5)~~ After the payment of all expenses of  
25 administration and claims against the estate, the court may  
26 order the remaining property held by the ancillary personal  
27 representative transferred to the foreign domiciliary personal  
28 representative or distributed to the beneficiaries heirs or  
29 devisees.

30 (7)~~(6)~~ Ancillary personal representatives shall have  
31 the same rights, powers, and authority as other personal

1 representatives in Florida to manage and settle estates; to  
2 sell, lease, or mortgage local property; and to raise funds  
3 for the payment of debts, claims, and devises in the  
4 domiciliary jurisdiction. No property shall be sold, leased,  
5 or mortgaged to pay a debt or claim that is barred by any  
6 statute of limitation or of nonclaim of this state.

7 Section 170. Section 734.1025, Florida Statutes, is  
8 amended to read:

9 734.1025 Nonresident decedent's testate estate with  
10 property not exceeding \$50,000~~\$25,000~~ in this state;  
11 determination of claims.--

12 (1) When a nonresident decedent dies testate and  
13 leaves property subject to administration in this state the  
14 gross value of which does not exceed \$50,000 at the date of  
15 death~~\$25,000~~, the foreign domiciliary personal representative  
16 of the estate ~~may determine the question of claims in this~~  
17 ~~state~~ before the expiration of 2 years after the decedent's  
18 death may file the 2-year period provided in s. 733.710 by  
19 filing in the circuit court of the county where any property  
20 is located an authenticated transcript of so much of the  
21 foreign domiciliary proceedings as will show the will and  
22 beneficiaries of the estate, as provided in the Florida  
23 Probate Rules. The court shall admit the will and any codicils  
24 to probate if they comply with s. 732.502(1) or (2).+

25 ~~(a) In a testate estate, the probated will and all~~  
26 ~~probated codicils of the decedent; the order admitting them to~~  
27 ~~record; the letters or their equivalent; and the part of the~~  
28 ~~record showing the names of the devisees and heirs of the~~  
29 ~~decedent or an affidavit of the domiciliary personal~~  
30 ~~representative reciting that the names are not shown or not~~  
31 ~~fully disclosed by the domiciliary record and specifying the~~

1 ~~names. On presentation of the foregoing, the court shall~~  
2 ~~admit the will and any codicils to probate if they comply with~~  
3 ~~s. 732.502(1) or (2).~~

4 ~~(b) In an intestate estate, the authenticated copy of~~  
5 ~~letters of administration, or their equivalent, with the part~~  
6 ~~of the record showing the names of the heirs of the decedent~~  
7 ~~or an affidavit of the domiciliary personal representative~~  
8 ~~supplying the names, as provided in paragraph (a). On~~  
9 ~~presentation of the foregoing, the court shall order them~~  
10 ~~recorded.~~

11 ~~(2) After complying with the foregoing requirements,~~  
12 ~~The foreign domiciliary personal representative may shall~~  
13 ~~cause a notice to creditors to be served and published~~  
14 ~~according to the revelant requirements of chapter 733 s.~~  
15 ~~731.111, notifying all persons having claims or demands~~  
16 ~~against the estate to file them. Claims not filed in~~  
17 ~~accordance with chapter 733 shall be barred as provided in s.~~  
18 ~~733.702. If any claim is filed, a personal representative~~  
19 ~~shall be appointed as provided in the Florida Probate Rules.~~

20 ~~(3) The procedure for filing claims and objection to~~  
21 ~~them and for suing on them shall be the same as for other~~  
22 ~~estates, except as hereinafter provided.~~

23 ~~(4) If no claims are filed against the estate within~~  
24 ~~the time allowed, the court shall enter an order adjudging~~  
25 ~~that notice to creditors has been duly given and proof thereof~~  
26 ~~filed and that no claims have been filed against the estate or~~  
27 ~~that all claims have been satisfied.~~

28 ~~(5) If any claim is filed against the estate within~~  
29 ~~the time allowed, the court shall send to the domiciliary~~  
30 ~~personal representative a copy of the claim and a notice~~  
31 ~~setting a date for a hearing to appoint an ancillary personal~~



1 ~~representative. At the hearing, the court shall appoint an~~  
2 ~~ancillary personal representative according to the preferences~~  
3 ~~as provided in s. 733.301.~~

4 ~~(6) If an ancillary personal representative is~~  
5 ~~appointed pursuant to subsection (5), the procedure for~~  
6 ~~filing, objecting to, and suing on claims shall be the same as~~  
7 ~~for other estates, except that the ancillary personal~~  
8 ~~representative appointed shall have not fewer than 30 days~~  
9 ~~from the date of his or her appointment within which to object~~  
10 ~~to any claim filed.~~

11 ~~(7) The filing by domiciliary personal representatives~~  
12 ~~of portions of the domiciliary probate proceedings as~~  
13 ~~specified in this section, and the barring of claims of~~  
14 ~~creditors in such estates by the publication of notice to~~  
15 ~~creditors as set forth in this section, in all cases prior to~~  
16 ~~June 25, 1980, are hereby validated and confirmed.~~

17 Section 171. Subsections (1) and (3) of section  
18 734.104, Florida Statutes, are amended to read:

19 734.104 Foreign wills; admission to record; effect on  
20 title.--

21 (1) An authenticated copy of the will of a nonresident  
22 that devises real property in this state, or any right, title,  
23 or interest in the property, may be admitted to record in any  
24 county of this state where the property is located at any time  
25 after 2 years from the death of the decedent or at any time  
26 after the domiciliary personal representative has been  
27 discharged if there has been no proceeding to administer the  
28 estate of the decedent in this state, provided:

29 (a) The will was executed as required by Chapter 732  
30 ~~complies with s. 732.502 as to form and manner of execution;~~  
31 and

1 (b) The will has been admitted to probate in the  
2 proper court of any other state, territory, or country.

3 (3) If the court finds that the requirements of this  
4 section have been met ~~has been complied with~~, it shall enter  
5 an order admitting the foreign will to record.

6 Section 172. Section 734.201, Florida Statutes, is  
7 amended to read:

8 734.201 Jurisdiction by act of foreign personal  
9 representative.--A foreign personal representative submits  
10 personally to the jurisdiction of the courts of this state in  
11 any proceeding concerning the estate by:

12 (1) Filing authenticated copies of the domiciliary  
13 proceedings under s. 734.104; ~~734.103~~.

14 (2) Receiving payment of money or taking delivery of  
15 personal property, under s. 734.101; ~~or~~.

16 (3) Doing any act as a personal representative in this  
17 state that would have given the state jurisdiction over that  
18 person ~~him or her~~ as an individual.

19 Section 173. Section 734.202, Florida Statutes, is  
20 amended to read:

21 734.202 Jurisdiction by act of decedent.--In addition  
22 to jurisdiction conferred by s. 734.201, a foreign personal  
23 representative is subject to the jurisdiction of the courts of  
24 this state to the same extent that the ~~his or her~~ decedent was  
25 subject to jurisdiction immediately before death.

26 Section 174. Section 735.101, Florida Statutes, is  
27 repealed.

28 Section 175. Section 735.103, Florida Statutes, is  
29 repealed.

30 Section 176. Section 735.107, Florida Statutes, is  
31 repealed.

1           Section 177. Subsection (2) of section 735.201,  
2 Florida Statutes, is amended to read:

3           735.201 Summary administration; nature of  
4 proceedings.--Summary administration may be had in the  
5 administration of either a resident or nonresident decedent's  
6 estate, when it appears:

7           (2) That the value of the entire estate subject to  
8 administration in this state, less the value of property  
9 exempt from the claims of creditors, does not exceed \$75,000  
10 ~~\$25,000~~ or that the decedent has been dead for more than 2  
11 years.

12           Section 178. Section 735.203, Florida Statutes, is  
13 amended to read:

14           735.203 Petition for summary administration.--

15           (1) A petition for summary administration may be filed  
16 by any beneficiary, ~~heir at law,~~ or person nominated as  
17 personal representative in the decedent's will offered for  
18 probate, ~~and shall be signed and verified by.~~ The petition  
19 must be signed and verified by

20           ~~(a) the surviving spouse, if any, and any; the heirs~~  
21 ~~at law or beneficiaries.~~

22           (2) If a person named in subsection (1) has died, is  
23 incapacitated, or is a minor, or has conveyed or transferred  
24 all interest in the property of the estate, then, as to that  
25 person, the petition must be signed and certified by:

26           (a) The personal representative, if any, of a deceased  
27 person or, if none, the surviving spouse, if any, and the  
28 beneficiaries; or

29           (b) The guardian of an incapacitated person or a  
30 minor.

31

1 The grantee or transferee of any of them is authorized to sign  
2 and verify the petition instead of the beneficiary or  
3 surviving spouse.

4 (3) The joinder in, or consent to, a petition for  
5 summary administration is not required of a beneficiary who  
6 will receive full distributive share under the proposed  
7 distribution. Any beneficiary not joining or consenting shall  
8 receive formal notice of the petition. ~~who are sui juris; and~~  
9 ~~the guardians of any heirs at law or beneficiaries who are not~~  
10 ~~sui juris; or~~

11 ~~(b) The persons described by s. 735.209.~~

12 ~~(2) A petition for summary administration shall~~  
13 ~~contain, in addition to the statements required by s.~~  
14 ~~733.202(2)(b) and (c), the following:~~

15 ~~(a) Facts showing that petitioners are entitled to~~  
16 ~~summary administration as provided in s. 735.201.~~

17 ~~(b) A complete list of the assets of the estate and~~  
18 ~~their estimated value, together with those assets claimed to~~  
19 ~~be exempt.~~

20 ~~(c) A statement that the estate is not indebted or~~  
21 ~~that provision for payment of debts has been made.~~

22 ~~(d) A proposed schedule of distribution of all assets~~  
23 ~~to those entitled thereto as surviving spouse, beneficiaries,~~  
24 ~~or creditors.~~

25 Section 179. Section 735.206, Florida Statutes, is  
26 amended to read:

27 735.206 Summary administration distribution.--

28 (1) Upon the filing of the petition for summary  
29 administration, the will, if any, shall be proved in  
30 accordance with chapter 733 and be admitted to probate.

31

1           (2) Prior to entry of the order of summary  
2 administration, the petitioner shall make a diligent search  
3 and reasonable inquiry for any known or reasonably  
4 ascertainable creditors, serve a copy of the petition on those  
5 creditors, and make provision for payment for those creditors  
6 to the extent that assets are available.

7           ~~(3)(2) The court may enter~~ ~~After such hearing as the~~  
8 ~~court may require,~~an order of summary administration ~~may be~~  
9 ~~entered~~ allowing immediate distribution of the assets to the  
10 persons entitled to them.

11           ~~(4)(3)~~ The order of summary administration and  
12 distribution so entered shall have the following effect:

13           (a) Those to whom specified parts of the decedent's  
14 estate, including exempt property, are assigned by the order  
15 shall be entitled to receive and collect the parts and to have  
16 the parts transferred to them. They may maintain actions to  
17 enforce the right.

18           (b) Debtors of the decedent, those holding property of  
19 the decedent, and those with whom securities or other property  
20 of the decedent are registered are authorized and empowered to  
21 comply with the order by paying, delivering, or transferring  
22 to those specified in the order the parts of the decedent's  
23 estate assigned to them by the order, and the persons so  
24 paying, delivering, or transferring shall not be accountable  
25 to anyone else for the property.

26           (c) After the entry of the order, bona fide purchasers  
27 for value from those to whom property of the decedent may be  
28 assigned by the order shall take the property free of all  
29 claims of creditors of the decedent and all rights of the  
30 surviving spouse and all other beneficiaries ~~heirs and~~  
31 ~~devisees~~.

1 (d) Property of the decedent that is not exempt from  
2 claims of creditors and that remains in the hands of those to  
3 whom it may be assigned by the order shall continue to be  
4 liable for claims against the decedent until barred as  
5 provided in the code ~~this law~~. Any known or reasonably  
6 ascertainable creditor who did not receive notice and for whom  
7 provision for payment was not made may enforce the claim and,  
8 if the creditor prevails, shall be awarded reasonable  
9 attorney's fees as an element of costs against those who  
10 joined in the petition.

11 (e) The recipients of the decedent's property under  
12 ~~petitioners for~~ the order of summary administration shall be  
13 personally liable for a pro rata share of all lawful claims  
14 against the estate of the decedent, but only to the extent of  
15 the value of the estate of the decedent actually received by  
16 each recipient ~~petitioner~~, exclusive of the property exempt  
17 from claims of creditors under the constitution and statutes  
18 of Florida.

19 (f) After 2 years from the death of the decedent,  
20 neither the decedent's estate nor those to whom it may be  
21 assigned shall be liable for any claim against the decedent,  
22 unless proceedings have been taken for the enforcement of the  
23 claim.

24 (g) Any heir or devisee of the decedent who was  
25 lawfully entitled to share in the estate but who was not  
26 included in the order of summary administration and  
27 distribution may enforce all ~~his or her~~ rights in appropriate  
28 proceedings against those who procured the order and, if ~~when~~  
29 successful, shall be awarded reasonable attorney's fees as an  
30 element of costs.

31

1           Section 180. Section 735.2063, Florida Statutes, is  
2 amended to read:

3           735.2063 Notice to creditors.--

4           (1) Any person who has obtained ~~received~~ an order of  
5 summary administration may publish a notice to creditors  
6 according to the relevant requirements of s. 733.2121 ~~731.111~~,  
7 notifying all persons having claims or demands against the  
8 estate of the decedent that an order of summary administration  
9 has been entered by the court. The ~~Such~~ notice shall ~~will~~  
10 specify the total ~~cash~~ value of the estate and the names and  
11 addresses of those to whom it has been assigned by the ~~such~~  
12 order. ~~Such notice, if published, shall be published once a~~  
13 ~~week for 2 consecutive weeks in a newspaper published in the~~  
14 ~~county where such order was entered, and proof of publication~~  
15 ~~of such notice shall be filed with the court.~~

16           (2) If proof of publication of the ~~such~~ notice is  
17 filed with the court, all claims and demands of creditors  
18 against the estate of the decedent who are not known or are  
19 reasonably ascertainable shall be forever barred unless the  
20 ~~such~~ claims and demands are filed with the court within 3  
21 months after ~~from~~ the first publication of the ~~such~~ notice.

22           Section 181. Section 735.209, Florida Statutes, is  
23 repealed.

24           Section 182. Subsection (3) of section 735.301,  
25 Florida Statutes, is amended to read:

26           735.301 Disposition without administration.--

27           (3) Any person, firm, or corporation paying,  
28 delivering, or transferring property under the authorization  
29 shall be forever discharged from ~~any~~ liability thereon.

30           Section 183. Section 735.302, Florida Statutes, is  
31 amended to read:

1           735.302 Income tax refunds in certain cases.--

2           (1) In any case when the United States Treasury  
3 Department determines that an overpayment of federal income  
4 tax exists and the person in whose favor the overpayment is  
5 determined is dead at the time the overpayment of tax is to be  
6 refunded, and irrespective of whether the decedent had filed a  
7 joint and several or separate income tax return, the amount of  
8 the overpayment, if not in excess of \$2,500~~\$500~~, may be  
9 refunded as follows:

10           (a) Directly to the surviving spouse on his or her  
11 verified application; or

12           (b) If there is no surviving spouse, to one of the  
13 decedent's children who is designated in a verified  
14 application purporting to be executed by all of the decedent's  
15 children over the age of 14 years.

16  
17 In either event, the application must show that the decedent  
18 was not indebted, that provision has been made for the payment  
19 of the decedent's debts, or that the entire estate is exempt  
20 from the claims of creditors under the constitution and  
21 statutes of the state, and that no administration of the  
22 estate, including summary administration, has been initiated  
23 and that none is planned, to the knowledge of the applicant.

24           (2) If a refund is made to the surviving spouse or  
25 designated child pursuant to the application, the refund shall  
26 operate as a complete discharge to the United States from  
27 liability from any action, claim, or demand by any beneficiary  
28 of the decedent or other person. ~~Nothing in~~ This section  
29 shall be construed as establishing the ownership or rights of  
30 the payee ~~any person~~ in the refund ~~so distributed~~.

31



1           Section 184. Section 737.208, Florida Statutes, is  
2 created to read:

3           737.208 Administration pending outcome of contest or  
4 other proceeding.--

5           (1) Pending the outcome of a proceeding filed to  
6 determine the validity of all or part of a trust or the  
7 beneficiaries of all or part of a trust, the trustee shall  
8 proceed with the administration of the trust as if no  
9 proceeding had been commenced, except that no distribution may  
10 be made to a beneficiary in contravention of the rights of  
11 those persons that may be affected by the outcome of the  
12 proceeding.

13           (2) Upon motion of a party and after notice to  
14 interested persons, a court may, upon good cause shown, make  
15 an exception to the prohibition under subsection (1) and  
16 authorize the trustee to distribute trust assets to a  
17 beneficiary subject to any conditions the court, in its  
18 discretion may impose, including the posting of bond by the  
19 beneficiary.

20           Section 185. Section 737.3054, Florida Statutes, is  
21 amended to read:

22           737.3054 Trustee's duty to pay expenses and  
23 obligations of grantor's ~~settlor's~~ estate.--

24           (1) A trustee of a trust described in s. 733.707(3)  
25 shall pay to the personal representative of a grantor's  
26 ~~settlor's~~ estate any amounts that the personal representative  
27 certifies in writing to the trustee are required to pay the  
28 expenses of the administration and obligations of the  
29 grantor's ~~settlor's~~ estate ~~and the enforceable claims of the~~  
30 ~~settlor's creditors~~. Payments made by a trustee, unless  
31 otherwise provided in the trust instrument, must be charged as

1 expenses of the trust without a contribution from anyone. The  
2 interests ~~interest~~ of all beneficiaries of such a trust are  
3 subject to the provisions of this subsection; however, the  
4 payments must be made from assets or property or the proceeds  
5 thereof, other than assets proscribed in s. 733.707(3), which  
6 are included in the grantor's ~~settlor's~~ gross estate for  
7 federal estate tax purposes.

8 (2) Unless a grantor ~~settlor~~ provides by will, or  
9 designates in a trust described in s. 733.707(3) ~~the funds or~~  
10 property passing under the ~~a trust described in s. 733.707(3)~~  
11 to be so used, the expenses of the administration and  
12 obligations of the grantor's ~~settlor's~~ estate ~~and enforceable~~  
13 ~~claims of the settlor's creditors~~ must be paid from the trust  
14 in the following order:

15 (a) Property of the residue of the trust remaining  
16 after all distributions that are to be satisfied by reference  
17 to a specific property or type of property, fund, or sum;

18 (b) Property that is not to be distributed from  
19 specified or identified property or a specified or identified  
20 item of property; and

21 (c) Property that is to be distributed from specified  
22 or identified property or a specified or identified item of  
23 property.

24 (3) Trust distributions that are to be satisfied from  
25 specified or identified property must be classed as  
26 distributions to be satisfied from the general assets of the  
27 trust and not otherwise disposed of in the trust instrument  
28 upon the failure or insufficiency of funds or property from  
29 which payment should be made, to the extent of the  
30 insufficiency. Trust distributions given for valuable  
31 consideration abate with other distributions of the same class

1 only to the extent of the excess over the value of the  
2 consideration until all others of the same class are  
3 exhausted. Except as provided in this section, trust  
4 distributions abate equally and ratably and without preference  
5 or priority between real and personal property. When a  
6 specified or identified item of property that has been  
7 designated for distribution in the trust instrument or that is  
8 charged with a distribution is sold or taken by the trustee,  
9 other beneficiaries shall contribute according to their  
10 respective interests to the beneficiary whose property has  
11 been sold or taken, and before distribution the trustee shall  
12 determine the amounts of the respective contributions, and  
13 they must be paid or withheld before distribution is made.

14 (4) The trustee shall pay the expenses of trust  
15 administration, including compensation of trustees and their  
16 attorneys, before and in preference to the expenses of the  
17 administration and obligations of the grantor's ~~settlor's~~  
18 estate ~~and enforceable claims of the settlor's creditors.~~

19 Section 186. Section 737.306, Florida Statutes, is  
20 amended to read:

21 737.306 Personal liability of trustee.--

22 (1)(a) Unless otherwise provided in the contract, a  
23 trustee is not personally liable on contracts, except  
24 contracts for attorneys' fees, properly entered into in the  
25 trustee's fiduciary capacity in the course of administration  
26 of the trust estate unless the trustee ~~he or she~~ fails to  
27 reveal that ~~his or her~~ representative capacity and identify  
28 the trust estate in the contract.

29 (b) A trustee is personally liable for obligations  
30 arising from ownership or control of property of the trust  
31 estate or for torts committed in the course of administration

1 of the trust estate only if the trustee is personally at  
2 fault.

3 (c) Claims based on contracts, except contracts for  
4 attorneys' fees, entered into by a trustee in his or her  
5 fiduciary capacity, on obligations arising from ownership or  
6 control of the trust estate, or on torts committed in the  
7 course of trust administration may be asserted against the  
8 trust estate by proceeding against the trustee in the  
9 trustee's ~~his or her~~ fiduciary capacity, whether or not the  
10 trustee is personally liable.

11 (2) Issues of liability between the trust estate and  
12 the trustee individually may be determined in a proceeding for  
13 accounting, surcharge, or indemnification, or in any other  
14 appropriate proceeding.

15 (3) A successor trustee is not personally liable for  
16 any action taken or omitted to be taken by any prior trustee;  
17 nor does any successor trustee have a duty to institute any  
18 action against any prior trustee, or file any claim against  
19 any prior trustee's estate, for any of the prior trustee's  
20 acts or omissions as trustee under any of the following  
21 circumstances:

22 (a) The successor trustee succeeds a trustee who was  
23 also the grantor of a trust that was revocable during the time  
24 that the grantor served as trustee;

25 (b) As to any beneficiary who has waived any  
26 accounting required by s. 737.303, but only as to the periods  
27 included in the ~~such~~ waiver;

28 (c) As to any beneficiary who has released the  
29 successor trustee from the ~~such~~ duty to institute any action  
30 or file any claim;

31

1 (d) As to any person who is not a beneficiary within  
2 the meaning of s. 737.303(4)(b); or

3 (e) As to any beneficiary described in s.  
4 737.303(4)(b):

5 1. If a super majority of the reasonably ascertainable  
6 current income or principal beneficiaries described in s.  
7 737.303(4)(b)1. and a super majority of the reasonably  
8 ascertainable remainder beneficiaries described in s.  
9 737.303(4)(b)2. have released the successor trustee;

10 2. If the beneficiary has not delivered a written  
11 request to the successor trustee to institute an action or  
12 file a claim against the prior trustee within 6 months after  
13 the date of the successor trustee's acceptance of the trust,  
14 if the successor trustee has notified the beneficiary in  
15 writing of its acceptance in accordance with s. 737.303(1) and  
16 that ~~such~~ writing advises the beneficiary that, unless the  
17 beneficiary delivers the ~~such~~ written request within 6 months  
18 after the date of acceptance, the ~~his or her~~ right to proceed  
19 against the successor trustee will be barred pursuant to this  
20 section; or

21 3. For any action or claim that the beneficiary is  
22 barred from bringing against the prior trustee.

23 ~~(4)(a) Two years after the death of a settlor, neither~~  
24 ~~a trust described in s. 733.707(3) as established by the~~  
25 ~~settlor, the trustee of the trust, nor any beneficiary may be~~  
26 ~~held liable for any claim or cause of action against the~~  
27 ~~settlor by a creditor who seeks to recover from the trust,~~  
28 ~~trustee, or beneficiary.~~

29 ~~(b) This subsection does not apply to a creditor who~~  
30 ~~has timely filed a claim against the settlor's estate under s.~~  
31 ~~733.702 within 2 years after the settlor's death and whose~~

1 ~~claim has not been paid or otherwise disposed of, even if the~~  
2 ~~settlor's estate proceedings have been closed or otherwise~~  
3 ~~completed.~~

4 ~~(c) This subsection does not affect the lien of a duly~~  
5 ~~recorded mortgage or security interest or the right to~~  
6 ~~foreclose and enforce the mortgage or lien.~~

7 ~~(f)(5)~~ For the purposes of this section, a super  
8 majority of beneficiaries means at least two-thirds in  
9 interest of the beneficiaries if the interests of the  
10 beneficiaries are reasonably ascertainable; otherwise, it  
11 means at least two-thirds in number of the beneficiaries. A  
12 release or waiver under this section may be exercised by a  
13 legal representative or natural guardian of the beneficiary  
14 without the filing of any proceeding or approval of any court.  
15 Nothing in this subsection~~(3)~~ affects any liability of the  
16 prior trustee or the right of the successor trustee or any  
17 beneficiary to pursue an action or claim against the prior  
18 trustee.

19 Section 187. Section 737.3061, Florida Statutes, is  
20 created to read:

21 737.3061 Limitations on actions against certain  
22 trusts.--

23 (1) After the death of a grantor, no creditor of the  
24 grantor may bring, maintain, or continue any direct action  
25 against a trust described in s. 733.707(3), the trustee of the  
26 trust, or any beneficiary of the trust which is dependent on  
27 the individual liability of the grantor. Those claims and  
28 causes of action against the grantor shall be presented and  
29 enforced against the grantor's estate as provided in part VII  
30 of chapter 733, and the personal representative of the  
31 grantor's estate may obtain payment from the trustee of a

1 trust described in s. 733.707(3) as provided in ss.  
2 733.607(2), 733.707(3), and 737.3054(1).

3 (2) This section shall not preclude a direct action  
4 against a trust described in s. 733.707(3), the trustee of the  
5 trust, or a beneficiary of the trust which is not dependent on  
6 the individual liability of the grantor.

7 (3) This section does not affect the lien of any duly  
8 recorded mortgage or security interest or the lien of any  
9 person in possession of personal property or the right to  
10 foreclose and enforce the mortgage or lien.

11 Section 188. Section 737.308, Florida Statutes, is  
12 amended to read:

13 737.308 Notice of trust.--

14 (1) Upon the death of a grantor ~~settlor~~ of a trust  
15 described in s. 733.707(3), the trustee must file a notice of  
16 trust with the court of the county of the grantor's ~~settlor's~~  
17 domicile and the court having jurisdiction of the grantor's  
18 ~~settlor's~~ estate.

19 (2) The notice of trust must contain the name of the  
20 grantor ~~settlor~~, the grantor's ~~settlor's~~ date of death, the  
21 title of the trust, if any, the date of the trust, and the  
22 name and address of the trustee.

23 (3) If the grantor's ~~settlor's~~ probate proceeding has  
24 been commenced, the clerk must notify the trustee in writing  
25 of the date of the commencement of the probate proceeding and  
26 the file number.

27 (4) The clerk shall file and index the notice of trust  
28 in the same manner as a caveat, unless there exists a probate  
29 proceeding for the grantor's ~~settlor's~~ estate in which case  
30 the notice of trust must be filed in the probate proceeding  
31

1 and the clerk shall send a copy to the personal  
2 representative.

3 (5) The clerk shall send a copy of any caveat filed  
4 regarding the grantor settlor to the trustee, and the Notice  
5 of Trust to any caveator, unless there is a probate proceeding  
6 pending and the personal representative and the trustee are  
7 the same.

8 ~~(6) In any proceeding affecting the expenses of the~~  
9 ~~administration of the estate, or any claims described in s.~~  
10 ~~733.702(1), the trustee of a trust described in s. 733.707(3)~~  
11 ~~is an interested person in the administration of the grantor's~~  
12 ~~estate.~~

13 (6)(7) Any proceeding affecting the expenses of the  
14 administration or obligations of the grantor's estate ~~or any~~  
15 ~~claims described in s. 733.702(1)~~ prior to the trustee filing  
16 a notice of trust are binding upon the trustee.

17 (7)(8) The trustee's failure to file the notice of  
18 trust does not affect the trustee's obligation to pay expenses  
19 of administration and obligations of the grantor's estate  
20 ~~enforceable claims~~ as provided in s. 733.607(2).

21 Section 189. Section 215.965, Florida Statutes, is  
22 amended to read:

23 215.965 Disbursement of state moneys.--Except as  
24 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.  
25 717.124(5), s. 732.107(5)~~(6)~~, or s. 733.816(5), all moneys in  
26 the State Treasury shall be disbursed by state warrant, drawn  
27 by the Comptroller upon the State Treasury and payable to the  
28 ultimate beneficiary. This authorization shall include  
29 electronic disbursement.

30 Section 190. Subsection (3) of section 660.46, Florida  
31 Statutes, is amended to read:



1           660.46 Substitution of fiduciaries.--  
2           (3) Unless a waiver or consent shall be filed in the  
3 proceedings as provided in subsection (4), the provisions of  
4 s. 731.301(1)~~(a)~~, ~~(c)~~, and (2)~~(d)~~ shall apply with respect to  
5 notice of the proceedings to all persons who are then  
6 cofiduciaries with the original fiduciary, other than a person  
7 joining as a petitioner in the proceedings; to all persons  
8 named in the governing instrument as substitutes or successors  
9 to the fiduciary capacity of the original fiduciary; to the  
10 persons then living who are entitled under the governing  
11 instrument to appoint a substitute or successor to act in the  
12 fiduciary capacity of the original fiduciary; to all vested  
13 beneficiaries of the fiduciary account; and to all then-living  
14 originators of the governing instrument. Unless a waiver or  
15 consent shall be filed in the proceedings as provided in  
16 subsection (4), the provisions of s. 731.301~~(2)~~ shall apply  
17 with respect to notice to all contingent beneficiaries of the  
18 fiduciary account. Only the persons or classes of persons  
19 described in the foregoing provisions of this subsection shall  
20 be deemed to be interested persons for the purposes of this  
21 section and the proceedings and notices provided for in this  
22 section; and the provisions of ss. 731.301(3) and  
23 731.303(3)~~(4)~~ and (4)~~(5)~~, relating to notice requirements, the  
24 effect of notice, and representation of interests, shall apply  
25 to the proceedings provided for in this section.

26           Section 191. Subsection (1) of section 737.111,  
27 Florida Statutes, is amended to read:

28           737.111 Execution requirements for express trusts.--  
29           (1) The testamentary aspects of a trust defined in s.  
30 731.201(34)~~(33)~~, are invalid unless the trust instrument is  
31

1 executed by the grantor ~~settlor~~ with the formalities required  
2 for the execution of a will.

3 Section 192. In editing manuscript for the next  
4 official version of the Florida Statutes, the Division of  
5 Statutory Revision and Indexing is directed to:

6 (1) Change the title of Part II of Chapter 732,  
7 Florida Statutes, from "Elective Share of Surviving Spouse" to  
8 "Elective Share of Surviving Spouse; Rights in Community  
9 Property."

10 (2) Change the title of Part III of Chapter 733,  
11 Florida Statutes, from "Priority to Administer and  
12 Qualifications of Personal Representative" to "Preference in  
13 Appointment and Qualifications of Personal Representative."

14 (3) Change the title of Part IV of Chapter 733,  
15 Florida Statutes, from "Appointment of Personal  
16 Representative; Bonds" to "Fiduciary Bonds."

17 (4) Change the title of Part V of Chapter 733, Florida  
18 Statutes, from "Curators; Successor Personal Representative;  
19 Removal" to "Curators; Resignation and Removal of Personal  
20 Representatives."

21 Section 193. This act shall take effect January 1,  
22 2002. The substantive rights of all persons which have vested  
23 prior to January 1, 2002, shall be determined as provided in  
24 former chapters 63, 215, 409, 660, and 731-737, Florida  
25 Statutes, as they existed prior to January 1, 2002. The  
26 procedures for the enforcement of substantive rights which  
27 have vested prior to January 1, 2002, shall be as provided in  
28 this act, except that any Family Administration filed before  
29 January 1, 2002, may be completed as a Family Administration.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 402  
4 Clarifies provisions and cross-references between s. 655.936,  
5 and s. 733.6065, F.S., relating to the opening of safe-deposit  
6 boxes.  
7 Revises escheated property provisions in s. 732.107, F.S., to  
8 remove entitlement to interest on escheated property and to  
9 add Florida certified public accountants to the list of  
10 persons who may receive proceeds on behalf of a person  
11 entitled to escheated property.  
12 Corrects glitches in elective share law, adds protected  
13 homestead property as excluded property from the elective  
14 estate, and adds charitable lead interests as a Class 4 source  
15 from which to pay an unsatisfied elective share.  
16 Revises the cap for estates in summary administration from  
17 \$50,000 to \$75,000.  
18 Restores court's discretionary authority to award reasonable  
19 attorney's fees in probate proceedings.  
20 Prohibits a trustee from making any distributions absent court  
21 approval pending a contest to the validity of a trust or a  
22 determination of the beneficiaries to a trust.  
23 Clarifies that the most recent supplemental writing referenced  
24 in a will governs over provisions in conflict among equally  
25 effective writings.  
26 Makes additional technical changes to conform terminology.  
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