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1 A bill to be entitled

2 An act relating to probate and trusts and statutes of
3 limitation; amending s. 731.103, F.S.; providing that fact
4 that missing person was subject to a specific peril of
5 death is evidence for a finding of a presumptive death;
6 amending ss. 731.201 and 731.303, F.S.; revising the
7 conflict of interest standard in the definitions of
8 "beneficiary," "devisee," "interested person," and in
9 judicial orders binding the trustee; amending s. 732.217,
10 F.S.; eliminating requirement that property be homestead
11 property to be excepted from the application of the
12 Florida Uniform Disposition of Community Property Rights
13 at Death Act; amending s. 732.502, F.S.; providing that
14 military testamentary instruments executed pursuant to
15 federal law are valid in this state; amending s. 732.603,
16 F.S.; revising language with respect to antilapse
17 provisions; amending s. 733.205, F.S.; revising language
18 with respect to the probate of notarial wills; amending s.
19 733.212, F.S.; revising language with respect to the
20 notice of administration; amending s. 733.2121, F.S.;
21 revising the time in which notice to creditors must be
22 served; amending s. 733.608, F.S.; revising language with
23 respect to the general power of the personal
24 representative; amending s. 733.609, F.S.; revising
25 language with respect to awarding taxable costs and
26 attorney's fees with respect to improper exercise of power
27 or the breach of fiduciary duty; amending s. 734.1025,
28 F.S., to conform to the amendment to s. 732.502, F.S.;
29 amending s. 735.2063, F.S.; revising language with respect
30 to notice to creditors; amending s. 737.106, F.S.;



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31 revising language with respect to revocable trust prior to
 32 dissolution of marriage; amending s. 737.2035, F.S.;
 33 revising language with respect to costs and attorney's
 34 fees in trust proceedings; amending s. 737.204, F.S.;
 35 revising language with respect to proceedings for review
 36 of employment of agents and review of compensation of
 37 trustee and employees of trust; amending s. 737.404, F.S.;
 38 revising language with respect to powers exercisable by
 39 joint trustees; creating s. 737.6035, F.S.; providing
 40 antilapse provision with respect to inter vivos trusts
 41 under certain circumstances; amending s. 737.627, F.S.;
 42 revising language with respect to costs and attorney's
 43 fees; amending s. 95.031, F.S.; including constructive
 44 fraud in actions based upon fraud for statute of
 45 limitations computation; providing such amendments are
 46 remedial in nature and have retrospective effect;
 47 reenacting ss. 709.08 and 717.1243, F.S., to incorporate
 48 by reference the amendment of s. 731.201, F.S.; reenacting
 49 ss. 660.46, 731.302, 737.303, and 737.307, F.S., to
 50 incorporate by reference the amendment to s. 731.303,
 51 F.S.; reenacting s. 382.025, F.S., to incorporate by
 52 reference the amendment to s. 732.502, F.S.; reenacting
 53 ss. 732.604 and 732.801, F.S., to incorporate by reference
 54 the amendment to s. 732.603, F.S.; reenacting s. 733.701,
 55 F.S., to incorporate by reference the amendment to s.
 56 733.2121, F.S.; reenacting s. 63.182, F.S., to incorporate
 57 by reference the amendment to s. 95.031, F.S.; providing
 58 an effective date.

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



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Section 1. Subsection (3) of section 731.103, Florida Statutes, is amended to read:

731.103 Evidence as to death or status.--In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(3) A person who is absent from the place of his or her last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier. Evidence showing that the absent person was exposed to a specific peril of death may be a sufficient basis for the court determining at any time after such exposure that he or she died less than 5 years after the date on which his or her absence commenced. A petition for this determination shall be filed in the county in Florida where the decedent maintained his or her domicile or in any county of this state if the decedent was not a resident of Florida at the time his or her absence commenced.

Section 2. Subsections (2), (9), and (21) of section 731.201, Florida Statutes, are amended to read:

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



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90 (2) "Beneficiary" means heir at law in an intestate estate
 91 and devisee in a testate estate. The term "beneficiary" does not
 92 apply to an heir at law or a devisee after that person's
 93 interest in the estate has been satisfied. In the case of a
 94 devise to an existing trust or trustee, or to a trust or trustee
 95 described by will, ~~in the absence of a conflict of interest of~~
 96 ~~the trust,~~ the trustee is a beneficiary of the estate. Except as
 97 otherwise provided in this subsection, the beneficiary of the
 98 trust is not a beneficiary of the estate of which that trust or
 99 the trustee of that trust is a beneficiary. However, if each
 100 trustee is also a personal representative of the estate, the
 101 beneficiary or beneficiaries of the trust as defined in s.
 102 737.303(4)(b) shall be regarded as a beneficiary of the estate
 103 ~~An owner of a beneficial interest in the trust is a beneficiary~~
 104 ~~of the trust and is, in the absence of a conflict of interest of~~
 105 ~~the trust, not a beneficiary of the estate.~~

106 (9) "Devisee" means a person designated in a will or trust
 107 to receive a devise. Except as otherwise provided in this
 108 subsection, in the case of a devise to an existing trust or
 109 trustee, or to a trust or trustee of a trust described by will,
 110 the trust or trustee, rather than the beneficiaries of the
 111 trust, is the devisee. However, if each trustee is also a
 112 personal representative of the estate, the beneficiary or
 113 beneficiaries of the trust as defined in s. 737.303(4)(b) shall
 114 be regarded as a devisee ~~The beneficiaries of the trust are not~~
 115 ~~devisees.~~

116 (21) "Interested person" means any person who may
 117 reasonably be expected to be affected by the outcome of the
 118 particular proceeding involved. In any proceeding affecting the
 119 estate or the rights of a beneficiary in the estate, the



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120 personal representative of the estate shall be deemed to be an
121 interested person. In any proceeding affecting the expenses of
122 the administration and obligations of a decedent's estate, or
123 any claims described in s. 733.702(1), the trustee of a trust
124 described in s. 733.707(3) is an interested person in the
125 administration of the grantor's estate. The term does not
126 include a beneficiary who has received complete distribution.
127 The meaning, as it relates to particular persons, may vary from
128 time to time and must be determined according to the particular
129 purpose of, and matter involved in, any proceedings.

130 Section 3. Section 731.303, Florida Statutes, is amended
131 to read:

132 731.303 Representation.--In the administration of or in
133 judicial proceedings involving estates of decedents or trusts,
134 the following apply:

135 (1) Persons are bound by orders binding others in the
136 following cases:

137 (a) Orders binding the sole holder or all coholders of a
138 power of revocation or a general, special, or limited power of
139 appointment, including one in the form of a power of amendment
140 or revocation to the extent that the power has not become
141 unexercisable in fact, bind all persons to the extent that their
142 interests, as persons who may take by virtue of the exercise or
143 nonexercise of the power, are subject to the power.

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

146 1. Orders binding a guardian of the property bind the
147 ward.

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



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150 adding to a trust, in reviewing the acts or accounts of a prior
 151 fiduciary, and in proceedings involving creditors or other third
 152 parties. However, for purposes of this section, a conflict of
 153 interest shall be deemed to exist when each trustee of a trust
 154 that is a beneficiary of the estate is also a personal
 155 representative of the estate.

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

159 (c) An unborn or unascertained person, or a minor or any
 160 other person under a legal disability, who is not otherwise
 161 represented is bound by an order to the extent that person's
 162 interest is represented by another party having the same or
 163 greater quality of interest in the proceeding.

164 (2) Orders binding a guardian of the person shall not bind
 165 the ward.

166 (3) In ~~judicial~~ proceedings involving the administration
 167 of estates or trusts, notice is required as follows:

168 (a) Notice as prescribed by law ~~the Florida Probate Rules~~
 169 shall be given to every interested person, or to one who can
 170 bind the interested person as described in paragraph (1)(a) or
 171 paragraph (1)(b). Notice may be given both to the interested
 172 person and to another who can bind him or her.

173 (b) Notice is given to unborn or unascertained persons who
 174 are not represented pursuant to paragraph (1)(a) or paragraph
 175 (1)(b) by giving notice to all known persons whose interests in
 176 the proceedings are the same as, or of a greater quality than,
 177 those of the unborn or unascertained persons.

178 (4) If the court determines that representation of the
 179 interest would otherwise be inadequate, the court may, at any



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180 time, appoint a guardian ad litem to represent the interests of
 181 an incapacitated person, an unborn or unascertained person, a
 182 minor or any other person otherwise under a legal disability, or
 183 a person whose identity or address is unknown. If not precluded
 184 by conflict of interest, a guardian ad litem may be appointed to
 185 represent several persons or interests.

186 (5) When a sole holder or coholder of a general, special,
 187 or limited power of appointment, including an exercisable power
 188 of amendment or revocation over property in an estate or trust,
 189 is bound by:

- 190 (a) Agreements, waivers, consents, or approvals; or
- 191 (b) Accounts, trust accountings, or other written reports
- 192 that adequately disclose matters set forth therein,

193
 194 then all persons who may take by virtue of, and whose interests
 195 are subject to, the exercise or nonexercise of the power are
 196 also bound, but only to the extent of their interests which
 197 could otherwise be affected by the exercise or nonexercise of
 198 the power.

199 Section 4. Subsection (2) of section 732.217, Florida
 200 Statutes, is amended to read:

201 732.217 Application.--Sections 732.216-732.228 apply to
 202 the disposition at death of the following property acquired by a
 203 married person:

204 (2) Real property, except ~~homestead~~ and real property held
 205 as tenants by the entirety, which is located in this state, and
 206 which:

- 207 (a) Was acquired with the rents, issues, or income of, the
- 208 proceeds from, or in exchange for, property acquired as, or



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209 which became and remained, community property under the laws of
 210 another jurisdiction; or

211 (b) Is traceable to that community property.

212 Section 5. Subsections (3) and (4) of section 732.502,
 213 Florida Statutes, are renumbered as subsections (4) and (5),
 214 respectively, and a new subsection (3) is added to said section,
 215 to read:

216 732.502 Execution of wills.--Every will must be in writing
 217 and executed as follows:

218 (3) Any will executed as a military testamentary
 219 instrument in accordance with Section 1044d of Title 10 United
 220 States Code, Chapter 53, by a person who is eligible for
 221 military legal assistance is valid as a will in this state.

222 Section 6. Paragraph (c) of subsection (1) and paragraph
 223 (c) of subsection (2) of section 732.603, Florida Statutes, are
 224 amended to read:

225 732.603 Antilapse; deceased devisee; class gifts.--Unless
 226 a contrary intention appears in the will:

227 (1) If a devisee or a beneficiary of a trust created by a
 228 will who is a grandparent, or a lineal descendant of a
 229 grandparent, of the testator:

230 (c) Is required by the will or by operation of law to be
 231 treated as having predeceased the testator,

232
 233 then the descendants of the devisee or beneficiary take per
 234 stirpes in place of the deceased devisee or beneficiary. A
 235 person who would have been a devisee under a class gift if that
 236 person had survived the testator shall be a devisee for purposes
 237 of this section whether that person died before or after the
 238 execution of the will.



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

242 (c) Is required by the will or by operation of law to be
 243 treated as having predeceased the testator,

244
 245 then the testamentary disposition to the devisee or beneficiary
 246 shall lapse unless an intention to substitute another appears in
 247 the will.

248 Section 7. Subsection (1) of section 733.205, Florida
 249 Statutes, is amended to read:

250 733.205 Probate of notarial will.--

251 (1) When a copy of a notarial will in the possession of a
 252 notary entitled to its custody in a foreign state or country,
 253 the laws of which state or country require that the will remain
 254 in the custody of the notary, duly authenticated by the notary,
 255 whose official position, signature, and seal of office are
 256 further authenticated by an American consul, vice consul, or
 257 other American consular officer within whose jurisdiction the
 258 notary is a resident, or whose official position, signature, and
 259 seal of office have been authenticated according to the
 260 requirements of the Hague Convention of 1961, is presented to
 261 the court, it may be admitted to probate if the original could
 262 have been admitted to probate in this state.

263 Section 8. Paragraph (c) of subsection (1) of section
 264 733.212, Florida Statutes, is amended to read:

265 733.212 Notice of administration; filing of objections.--

266 (1) The personal representative shall promptly serve a
 267 copy of the notice of administration on the following persons
 268 who are known to the personal representative:



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269 (c) The trustee of any trust described in s. 733.707(3)
 270 and each beneficiary of the trust as defined in s.
 271 737.303(4)(b), if each trustee is also a personal representative
 272 of the estate; and

273
 274 in the manner provided for service of formal notice, unless
 275 served under s. 733.2123. The personal representative may
 276 similarly serve a copy of the notice on any devisees under a
 277 known prior will or heirs or others who claim or may claim an
 278 interest in the estate.

279 Section 9. Subsection (1) of section 733.2121, Florida
 280 Statutes, is amended to read:

281 733.2121 Notice to creditors; filing of claims.--

282 (1) Unless creditors' claims are otherwise barred by s.
 283 733.710, the personal representative shall promptly publish a
 284 notice to creditors. The notice shall contain the name of the
 285 decedent, the file number of the estate, the designation and
 286 address of the court in which the proceedings are pending, the
 287 name and address of the personal representative, the name and
 288 address of the personal representative's attorney, and the date
 289 of first publication. The notice shall state that creditors must
 290 file claims against the estate with the court during ~~within~~ the
 291 time periods set forth in s. ss. 733.702 ~~and 733.710~~, or be
 292 forever barred.

293 Section 10. Subsection (2) of section 733.608, Florida
 294 Statutes, is amended, and subsections (3)-(13) are added to said
 295 section, to read:

296 733.608 General power of the personal representative.--

297 (2) If property that reasonably appears to the personal
 298 representative to be protected homestead is not occupied by ~~in~~



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299 ~~the possession of~~ a person who appears to have an interest in
 300 the property, the personal representative is authorized, but not
 301 required, to take possession of that property for the limited
 302 purpose of preserving, insuring, and protecting it for the
 303 person having an interest in the property heir or devisee,
 304 pending a determination of its homestead status. If the personal
 305 representative takes possession of that property, any rents and
 306 revenues may be collected by the personal representative for the
 307 account of the heir or devisee, but the personal representative
 308 shall have no duty to rent or otherwise make the property
 309 productive.

310 (3) If the personal representative expends funds or incurs
 311 obligations to preserve, maintain, insure, or protect the
 312 property referenced in subsection (2), the personal
 313 representative shall be entitled to a lien on that property and
 314 its revenues to secure repayment of those expenditures and
 315 obligations incurred. These expenditures and obligations
 316 incurred, including, but not limited to, fees and costs, shall
 317 constitute a debt owed to the personal representative that is
 318 charged against and which may be secured by a lien on the
 319 protected homestead, as provided in this section. The debt shall
 320 include any amounts paid for these purposes after the decedent's
 321 death and prior to the personal representative's appointment to
 322 the extent later ratified by the personal representative in the
 323 court proceeding provided for in this section.

324 (a) On the petition of the personal representative or any
 325 interested person, the court having jurisdiction of the
 326 administration of the decedent's estate shall adjudicate the
 327 amount of the debt after formal notice to the persons appearing
 328 to have an interest in the property.



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329 (b) The persons having an interest in the protected
330 homestead shall have no personal liability for the repayment of
331 the above noted debt. The personal representative may enforce
332 payment of the debt through any of the following methods:

333 1. By foreclosure of the lien as provided in this section;
334 2. By offset of the debt against any other property in the
335 personal representative's possession that otherwise would be
336 distributable to any person having an interest in the protected
337 homestead, but only to the extent of the fraction of the total
338 debt owed to the personal representative the numerator of which
339 is the value of that person's interest in the protected
340 homestead and the denominator of which is the total value of the
341 protected homestead; or

342 3. By offset of the debt against the revenues from the
343 protected homestead received by the personal representative.

344 (4) The personal representative's lien shall attach to the
345 property and take priority as of the date and time a notice of
346 that lien is recorded in the official records of the county
347 where that property is located and the lien may secure
348 expenditures and obligations incurred, including, but not
349 limited to, fees and costs made before or after recording the
350 notice. The notice of lien may be recorded prior to the
351 adjudication of the amount of the debt. The notice of lien also
352 shall be filed in the probate proceeding but failure to do so
353 shall not affect the validity of the lien. A copy of the notice
354 of lien shall be served by formal notice upon each person
355 appearing to have an interest in the property. The notice of
356 lien shall state:

357 (a) The name and address of the personal representative
358 and the personal representative's attorney;



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- 359 (b) The legal description of the property;
360 (c) The name of the decedent and also, to the extent known
361 to the personal representative, the name and address of each
362 person appearing to have an interest in the property; and
363 (d) That the personal representative has expended or is
364 obligated to expend funds to preserve, maintain, insure, and
365 protect the property and that the lien stands as security for
366 recovery of those expenditures and obligations incurred,
367 including, but not limited to, fees and costs.
368
369 Substantial compliance with the foregoing provisions shall
370 render the notice in comportment with this section.
371 (5) The lien shall terminate upon the earliest of:
372 (a) Recording a satisfaction or release signed by the
373 personal representative in the official records of the county
374 where the property is located;
375 (b) The discharge of the personal representative when the
376 estate administration is complete;
377 (c) One year from the recording of the lien in the
378 official records unless a proceeding to determine the debt or
379 enforce the lien has been filed; or
380 (d) The entry of an order releasing the lien.
381 (6) Within 14 days after receipt of the written request of
382 any interested person, the personal representative shall deliver
383 to the requesting person at a place designated in the written
384 request an estoppel letter setting forth the unpaid balance of
385 the debt secured by the lien referred to in this section. After
386 complete satisfaction of the debt secured by the lien, the
387 personal representative shall record within 30 days after
388 complete payment, a satisfaction of the lien in the official



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389 records of the county where the property is located. If a
390 judicial proceeding is necessary to compel compliance with the
391 provisions of this subsection, the prevailing party shall be
392 entitled to an award of attorney's fees and costs.

393 (7) The lien created by this section may be foreclosed in
394 the manner of foreclosing a mortgage under the provisions of
395 chapter 702.

396 (8) In any action for enforcement of the debt described in
397 this section, the court shall award taxable costs as in chancery
398 actions, including reasonable attorney's fees.

399 (9) A personal representative entitled to recover a debt
400 for expenditures and obligations incurred, including, but not
401 limited to, fees and costs, under this section may be relieved
402 of the duty to enforce collection by an order of the court
403 finding:

404 (a) That the estimated court costs and attorney's fees in
405 collecting the debt will approximate or exceed the amount of the
406 recovery; or

407 (b) That it is impracticable to enforce collection in view
408 of the improbability of collection.

409 (10) A personal representative shall not be liable for
410 failure to attempt to enforce collection of the debt if the
411 personal representative reasonably believes it would have been
412 economically impracticable.

413 (11) The personal representative shall not be liable for
414 failure to take possession of the protected homestead or to
415 expend funds on its behalf. In the event that the property is
416 determined by the court not to be protected homestead,
417 subsections (2)-(10) shall not apply and any liens previously
418 filed shall be deemed released upon recording of the order in



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419 the official records of the county where the property is
 420 located.

421 (12) Upon the petition of an interested party to
 422 accommodate a sale or the encumbrance of the protected
 423 homestead, the court may transfer the lien provided for in this
 424 section from the property to the proceeds of the sale or
 425 encumbrance by requiring the deposit of the proceeds into a
 426 restricted account subject to the lien. The court shall have
 427 continuing jurisdiction over the funds deposited. The
 428 transferred lien shall attach only to the amount asserted by the
 429 personal representative and any proceeds in excess of that
 430 amount shall not be subject to the lien or otherwise restricted
 431 under this section. Alternatively, the personal representative
 432 and the apparent owners of the protected homestead may agree to
 433 retain in escrow the amount demanded as reimbursement by the
 434 personal representative, to be held there under the continuing
 435 jurisdiction of the court pending a final determination of the
 436 amount properly reimbursable to the personal representative
 437 under this section.

438 (13) This act shall apply to estates of decedents dying
 439 after the date on which this act becomes law.

440 Section 11. Section 733.609, Florida Statutes, is amended
 441 to read:

442 733.609 Improper exercise of power; breach of fiduciary
 443 duty.--

444 (1) A personal representative's fiduciary duty is the same
 445 as the fiduciary duty of a trustee of an express trust, and a
 446 personal representative is liable to interested persons for
 447 damage or loss resulting from the breach of this duty. In all
 448 actions for breach of fiduciary duty or challenging the exercise



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449 of or failure to exercise a personal representative's powers,
 450 the court shall award taxable costs as in chancery actions,
 451 including attorney's fees.

452 (2) When awarding taxable costs, including attorney's
 453 fees, under this section, the court in its discretion may direct
 454 payment from a party's interest, if any, in the estate or enter
 455 a judgment which may be satisfied from other property of the
 456 party, or both.

457 (3) This section shall apply to all proceedings commenced
 458 hereunder after the effective date, without regard to the date
 459 of the decedent's death.

460 Section 12. Subsection (1) of section 734.1025, Florida
 461 Statutes, is amended to read:

462 734.1025 Nonresident decedent's testate estate with
 463 property not exceeding \$50,000 in this state; determination of
 464 claims.--

465 (1) When a nonresident decedent dies testate and leaves
 466 property subject to administration in this state the gross value
 467 of which does not exceed \$50,000 at the date of death, the
 468 foreign personal representative of the estate before the
 469 expiration of 2 years after the decedent's death may file in the
 470 circuit court of the county where any property is located an
 471 authenticated transcript of so much of the foreign proceedings
 472 as will show the will and beneficiaries of the estate, as
 473 provided in the Florida Probate Rules. The court shall admit the
 474 will and any codicils to probate if they comply with s.

475 732.502(1), ~~or~~ (2), or (3).

476 Section 13. Section 735.2063, Florida Statutes, is amended
 477 to read:

478 735.2063 Notice to creditors.--



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479 (1) Any person who has obtained an order of summary
480 administration may publish a notice to creditors according to
481 the relevant requirements of s. 733.2121, notifying all persons
482 having claims or demands against the estate of the decedent that
483 an order of summary administration has been entered by the
484 court. The notice shall specify the total value of the estate
485 and the names and addresses of those to whom it has been
486 assigned by the order.

487 (2) If proof of publication of the notice is filed with
488 the court, all claims and demands of creditors against the
489 estate of the decedent who are not known or are not reasonably
490 ascertainable shall be forever barred unless the claims and
491 demands are filed with the court within 3 months after the first
492 publication of the notice.

493 Section 14. Section 737.106, Florida Statutes, is amended
494 to read:

495 737.106 Revocable trust prior to dissolution of
496 marriage.--Unless the trust instrument or the judgment for
497 dissolution of marriage or divorce expressly provides otherwise,
498 if a revocable trust is executed by a husband or wife as settlor
499 prior to annulment of the marriage or entry of a judgment for
500 dissolution of marriage or divorce of settlor from settlor's
501 spouse, then any provision of the trust which affects the
502 settlor's ~~divorced~~ spouse will become void upon annulment of the
503 marriage or entry of the judgment of dissolution of marriage or
504 divorce, and any such trust will be administered and construed
505 as if the settlor's ~~divorced~~ spouse had died on the date of the
506 annulment or upon entry of the judgment for dissolution of
507 marriage or divorce.



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508 Section 15. Subsection (2) of section 737.2035, Florida
 509 Statutes, is amended to read:

510 737.2035 Costs and attorney's fees in trust proceedings.--

511 (2) Any attorney who has rendered services to a trust may
 512 be awarded reasonable compensation from the trust. The attorney
 513 may apply to the court for an order awarding attorney's fees,
 514 and, after notice and service upon the trustee and all
 515 beneficiaries entitled to an accounting under s. 737.303, the
 516 court shall enter its order on the fee application.

517 Section 16. Section 737.204, Florida Statutes, is amended
 518 to read:

519 737.204 Proceedings for review of employment of agents and
 520 review of compensation of trustee and employees of trust.--

521 (1) After notice to all interested persons, the court may
 522 review the propriety of the employment by a trustee of any
 523 person, including any attorney, auditor, investment adviser, or
 524 other specialized agent or assistant, and the reasonableness of
 525 any the compensation paid to that of any person or to se
 526 ~~employed and of the compensation determined by the trustee for~~
 527 ~~his or her own services. A person who has received excessive~~
 528 ~~compensation from a trust may be ordered to make a refund of the~~
 529 ~~excess.~~

530 (2) If the settlor's estate is being probated, and the
 531 settlor's trust or the trustee of the settlor's trust is a
 532 beneficiary under the settlor's will, the trustee, any person
 533 employed by the trustee the attorney, or any interested person
 534 may have the propriety of employment and the reasonableness of
 535 the compensation of the trustee or any person employed by the
 536 trustee determined in the probate proceeding.



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537 (3) The burden of proof of propriety of the employment and
 538 the reasonableness of the compensation shall be upon the trustee
 539 and the person employed by the trustee. Any person who is
 540 determined to have received excessive compensation from a trust
 541 for services rendered may be ordered to make appropriate refunds
 542 ~~In any proceeding under this section the petitioner shall~~
 543 ~~either:~~

544 ~~(a) Serve notice on all interested persons in the manner~~
 545 ~~provided for service of formal notice under s. 731.301, together~~
 546 ~~with a notice advising the interested person that an answer to~~
 547 ~~the petition must be filed and served on petitioner within 20~~
 548 ~~days from the service of the petition or the petition may be~~
 549 ~~considered ex parte, and such notice shall be sufficient for the~~
 550 ~~court to acquire jurisdiction for this proceeding over the~~
 551 ~~person receiving formal notice to the extent of the person's~~
 552 ~~interest in the trust; or~~

553 ~~(b) Obtain jurisdiction over interested persons in any~~
 554 ~~other manner permitted by law.~~

555 (4) Court proceedings to determine reasonable compensation
 556 of a trustee or any person employed by a trustee, if required,
 557 are a part of the trust administration process. The costs,
 558 including attorney's fees, of the person assuming the burden of
 559 proof of propriety of the employment and reasonableness of the
 560 compensation shall be determined by the court and paid from the
 561 assets of the trust unless the court finds the compensation paid
 562 or requested to be substantially unreasonable. The court shall
 563 direct from which part of the trust assets the compensation
 564 shall be paid ~~Persons given notice as provided in this section~~
 565 ~~shall be bound by all orders entered on the petition.~~



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566 (5) The court may determine reasonable compensation for a
 567 trustee or any person employed by a trustee without receiving
 568 expert testimony. Any party may offer expert testimony after
 569 notice to interested persons. If expert testimony is offered, a
 570 reasonable expert witness fee shall be awarded by the court and
 571 paid from the assets of the trust. The court shall direct from
 572 which part of the trust assets the fee shall be paid.

573 (6) Persons given notice as provided in this section shall
 574 be bound by all orders entered on the petition.

575 (7) In a proceeding pursuant to subsection (2), the
 576 petitioner may serve formal notice as provided in the Florida
 577 Probate Rules, and such notice shall be sufficient for the court
 578 to acquire jurisdiction over the person receiving it to the
 579 extent of the person's interest in the trust.

580 Section 17. Subsection (1) of section 737.404, Florida
 581 Statutes, is amended to read:

582 737.404 Powers exercisable by joint trustees; liability.--

583 (1) Any power vested in three or more trustees may be
 584 exercised by a majority, but a trustee who has not joined in
 585 exercising a power is not liable to the beneficiaries or to
 586 others for the consequences of the exercise, and a dissenting
 587 trustee is not liable for the consequences of an action ~~act~~ in
 588 which the dissenting trustee ~~he or she~~ joins at the direction of
 589 the majority of the trustees if the dissent is dissenting
 590 ~~trustee~~ expressed ~~his or her dissent~~ in writing to the other ~~any~~
 591 ~~of his or her~~ cotrustees at or before the time of the action
 592 ~~joinder~~.

593 Section 18. Section 737.6035, Florida Statutes, is created
 594 to read:



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595 737.6035 Antilapse; deceased trust beneficiary; class
 596 gifts.--Unless a contrary intention appears in the inter vivos
 597 trust:

598 (1) If a beneficiary of an inter vivos trust who is a
 599 grandparent, or a lineal descendant of a grandparent, of the
 600 grantor:

601 (a) Is dead at the time of the execution of the inter
 602 vivos trust or at the termination of a trust interest created by
 603 an inter vivos trust;

604 (b) Fails to survive the grantor; or

605 (c) Is required by the inter vivos trust or by operation
 606 of law to be treated as having predeceased the grantor;

607
 608 then the descendants of the trust beneficiary take per stirpes
 609 in place of the deceased beneficiary. A person who would have
 610 been a trust beneficiary under a class gift if that person had
 611 survived the grantor shall be a trust beneficiary for purposes
 612 of this section regardless of whether that person died before or
 613 after the execution of the inter vivos trust.

614 (2) If a trust beneficiary of an inter vivos trust who is
 615 not a grandparent, or a descendant of a grandparent, of the
 616 grantor:

617 (a) Is dead at the time of the execution of the inter
 618 vivos trust or at the termination of a trust interest created in
 619 an inter vivos trust;

620 (b) Fails to survive the grantor; or

621 (c) Is required by the inter vivos trust or by operation
 622 of law to be treated as having predeceased the grantor;

623



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624 then the trust disposition to the trust beneficiary shall lapse
 625 unless an intention to substitute another appears in the inter
 626 vivos trust.

627 (3) This section shall apply to all inter vivos trusts and
 628 amendments to those trusts executed on or after the effective
 629 date of this section.

630 Section 19. Section 737.627, Florida Statutes, is amended
 631 to read:

632 737.627 Costs and attorney's fees.--

633 (1) In all actions for breach of fiduciary duty or
 634 challenging the ~~proper~~ exercise of, or failure to exercise, a
 635 trustee's powers, the court shall award taxable costs as in
 636 chancery actions, including attorney's fees.

637 (2) When awarding taxable costs, including attorney's
 638 fees, under this section, the court, in its discretion, may
 639 direct payment from a party's interest, if any, in the trust or
 640 enter a judgment which may be satisfied from other property of
 641 the party, or both.

642 (3) This section shall apply to all proceedings described
 643 in subsection (1) commenced after the effective date of this
 644 act, without regard to the date the trust was created or the
 645 date of the settlor's death.

646 Section 20. Paragraph (a) of subsection (2) of section
 647 95.031, Florida Statutes, is amended to read:

648 95.031 Computation of time.--Except as provided in
 649 subsection (2) and in s. 95.051 and elsewhere in these statutes,
 650 the time within which an action shall be begun under any statute
 651 of limitations runs from the time the cause of action accrues.

652 (2)(a) An action founded upon ~~for~~ fraud under s. 95.11(3),
 653 including constructive fraud, must be begun within the period



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654 prescribed in this chapter, with the period running from the
655 time the facts giving rise to the cause of action were
656 discovered or should have been discovered with the exercise of
657 due diligence, instead of running from any date prescribed
658 elsewhere in s. 95.11(3), but in any event an action for fraud
659 under s. 95.11(3) must be begun within 12 years after the date
660 of the commission of the alleged fraud, regardless of the date
661 the fraud was or should have been discovered.

662 Section 21. The amendments to section 95.031, Florida
663 Statutes, are remedial in nature and shall have retrospective
664 effect.

665 Section 22. For the purpose of incorporating the amendment
666 to section 731.201, Florida Statutes, in references thereto,
667 subsection (8) of section 709.08, Florida Statutes, is reenacted
668 to read:

669 709.08 Durable power of attorney.--

670 (8) STANDARD OF CARE.--Except as otherwise provided in
671 paragraph (4)(e), an attorney in fact is a fiduciary who must
672 observe the standards of care applicable to trustees as
673 described in s. 737.302. The attorney in fact is not liable to
674 third parties for any act pursuant to the durable power of
675 attorney if the act was authorized at the time. If the exercise
676 of the power is improper, the attorney in fact is liable to
677 interested persons as described in s. 731.201 for damage or loss
678 resulting from a breach of fiduciary duty by the attorney in
679 fact to the same extent as the trustee of an express trust.

680 Section 23. For the purpose of incorporating the amendment
681 to section 731.201, Florida Statutes, in references thereto,
682 subsection (1) of section 717.1243, Florida Statutes, is
683 reenacted to read:



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684 717.1243 Small estate accounts.--

685 (1) A claim for unclaimed property made by a beneficiary,
686 as defined in s. 731.201, of a deceased owner need not be
687 accompanied by an order of a probate court if the claimant files
688 with the department an affidavit, signed by all beneficiaries,
689 stating that all the beneficiaries have amicably agreed among
690 themselves upon a division of the estate and that all funeral
691 expenses, expenses of the last illness, and any other lawful
692 claims have been paid. If the owner died testate, the claim
693 shall be accompanied by a copy of the will.

694 Section 24. For the purpose of incorporating the amendment
695 to section 731.303, Florida Statutes, in references thereto,
696 subsections (3) and (10) of section 660.46, Florida Statutes,
697 are reenacted to read:

698 660.46 Substitution of fiduciaries.--

699 (3) Unless a waiver or consent shall be filed in the
700 proceedings as provided in subsection (4), the provisions of s.
701 731.301(1) and (2) shall apply with respect to notice of the
702 proceedings to all persons who are then cofiduciaries with the
703 original fiduciary, other than a person joining as a petitioner
704 in the proceedings; to all persons named in the governing
705 instrument as substitutes or successors to the fiduciary
706 capacity of the original fiduciary; to the persons then living
707 who are entitled under the governing instrument to appoint a
708 substitute or successor to act in the fiduciary capacity of the
709 original fiduciary; to all vested beneficiaries of the fiduciary
710 account; and to all then-living originators of the governing
711 instrument. Unless a waiver or consent shall be filed in the
712 proceedings as provided in subsection (4), the provisions of s.
713 731.301 shall apply with respect to notice to all contingent



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714 beneficiaries of the fiduciary account. Only the persons or
 715 classes of persons described in the foregoing provisions of this
 716 subsection shall be deemed to be interested persons for the
 717 purposes of this section and the proceedings and notices
 718 provided for in this section; and the provisions of ss.
 719 731.301(3) and 731.303(3), (4), and (5), relating to notice
 720 requirements, the effect of notice, and representation of
 721 interests, shall apply to the proceedings provided for in this
 722 section.

723 (10) A beneficiary has received a final trust disclosure
 724 document or a limitation notice if, when the beneficiary is an
 725 adult, it is received by him or her or if, when the beneficiary
 726 is a minor or a disabled person, it is received by his or her
 727 representative as defined in s. 731.303.

728 Section 25. For the purpose of incorporating the amendment
 729 to section 731.303, Florida Statutes, in references thereto,
 730 section 731.302, Florida Statutes, is reenacted to read:

731 731.302 Waiver and consent by interested
 732 person.--Subsequent to the filing of a petition for
 733 administration, an interested person, including a guardian ad
 734 litem, administrator ad litem, guardian of the property,
 735 personal representative, trustee, or other fiduciary, or a sole
 736 holder or all coholders of a power of revocation or a power of
 737 appointment, may waive, to the extent of that person's interest
 738 or the interest which that person represents, subject to the
 739 provisions of ss. 731.303 and 733.604, any right or notice or
 740 the filing of any document, exhibit, or schedule required to be
 741 filed and may consent to any action or proceeding which may be
 742 required or permitted by this code.



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743 Section 26. For the purpose of incorporating the amendment
 744 to section 731.303, Florida Statutes, in references thereto,
 745 paragraphs (d) and (e) of subsection (4) of section 737.303,
 746 Florida Statutes, are reenacted to read:

747 737.303 Duty to inform and account to beneficiaries.--The
 748 trustee shall keep the beneficiaries of the trust reasonably
 749 informed of the trust and its administration. The trustee's duty
 750 to inform and account includes, but is not limited to, the
 751 following:

752 (4)

753 (d) A beneficiary or the beneficiary's representative, as
 754 defined in s. 731.303, may waive, in writing, the trustee's duty
 755 to account under paragraph (a).

756 (e) All rights provided a beneficiary under this section
 757 may be asserted by a legal representative or natural guardian of
 758 the beneficiary. Notice under subsection (1) and a trust
 759 accounting under paragraph (a) provided to a representative of
 760 the beneficiary as defined in s. 731.303 shall bind the
 761 beneficiary, and the trustee shall not be required to provide
 762 such notice or trust accounting to any beneficiary who would be
 763 bound by an order binding on a representative of the beneficiary
 764 under s. 731.303, if such notice or trust accounting,
 765 respectively, is provided to that representative.

766 Section 27. For the purpose of incorporating the amendment
 767 to section 731.303, Florida Statutes, in references thereto,
 768 subsection (4) of section 737.307, Florida Statutes, is
 769 reenacted to read:

770 737.307 Limitations on proceedings against trustees after
 771 beneficiary receives trust disclosure documents.--



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772 (4) A beneficiary has received a trust disclosure document
773 or a limitation notice if, being an adult, it is received by the
774 beneficiary or if, being a minor, disabled person, or person who
775 may take by virtue of the exercise or nonexercise of a power of
776 appointment, it is received by the beneficiary's representative
777 as defined in s. 731.303.

778 Section 28. For the purpose of incorporating the amendment
779 to section 732.502, Florida Statutes, in references thereto,
780 paragraph (a) of subsection (2) of section 382.025, Florida
781 Statutes, is reenacted to read:

782 382.025 Certified copies of vital records;
783 confidentiality; research.--

784 (2) OTHER RECORDS.--

785 (a) The department shall authorize the issuance of a
786 certified copy of all or part of any marriage, dissolution of
787 marriage, or death or fetal death certificate, excluding that
788 portion which is confidential and exempt from the provisions of
789 s. 119.07(1) as provided under s. 382.008, to any person
790 requesting it upon receipt of a request and payment of the fee
791 prescribed by this section. A certification of the death or
792 fetal death certificate which includes the confidential portions
793 shall be issued only:

794 1. To the registrant's spouse or parent, or to the
795 registrant's child, grandchild, or sibling, if of legal age, or
796 to any person who provides a will that has been executed
797 pursuant to s. 732.502, insurance policy, or other document that
798 demonstrates his or her interest in the estate of the
799 registrant, or to any person who provides documentation that he
800 or she is acting on behalf of any of them;



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801 2. To any agency of the state or local government or the
802 United States for official purposes upon approval of the
803 department; or

804 3. Upon order of any court of competent jurisdiction.

805 Section 29. For the purpose of incorporating the amendment
806 to section 732.603, Florida Statutes, in references thereto,
807 section 732.604, Florida Statutes, is reenacted to read:

808 732.604 Failure of testamentary provision.--

809 (1) Except as provided in s. 732.603, if a devise other
810 than a residuary devise fails for any reason, it becomes a part
811 of the residue.

812 (2) Except as provided in s. 732.603, if the residue is
813 devised to two or more persons and the devise to one of the
814 residuary devisees fails for any reason, that devise passes to
815 the other residuary devisee, or to the other residuary devisees
816 in proportion to their interests in the residue.

817 Section 30. For the purpose of incorporating the amendment
818 to section 732.603, Florida Statutes, in references thereto,
819 paragraph (a) of subsection (3) of section 732.801, Florida
820 Statutes, is reenacted to read:

821 732.801 Disclaimer of interests in property passing by
822 will or intestate succession or under certain powers of
823 appointment.--

824 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

825 (a) Unless the decedent or a donee of a power of
826 appointment has otherwise provided by will or other appropriate
827 instrument with reference to the possibility of a disclaimer by
828 the beneficiary, the interest disclaimed shall descend, be
829 distributed, or otherwise be disposed of in the same manner as
830 if the disclaimant had died immediately preceding the death or



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831 other event that caused the disclaimant's interest to become
 832 indefeasibly fixed both in quality and quantity. The disclaimer
 833 shall relate to that date for all purposes, whether recorded
 834 before or after the death or other event. An interest in
 835 property disclaimed shall never vest in the disclaimant. If the
 836 provisions of s. 732.603 would have been applicable had the
 837 disclaimant in fact died immediately preceding the death or
 838 other event, they shall be applicable to the disclaimed
 839 interest.

840 Section 31. For the purpose of incorporating the amendment
 841 to section 733.2121, Florida Statutes, in references thereto,
 842 section 733.701, Florida Statutes, is reenacted to read:

843 733.701 Notifying creditors.--Unless creditors' claims are
 844 otherwise barred by s. 733.710, every personal representative
 845 shall cause notice to creditors to be published and served under
 846 s. 733.2121.

847 Section 32. For the purpose of incorporating the amendment
 848 to section 95.031, Florida Statutes, in references thereto,
 849 section 63.182, Florida Statutes, is reenacted to read:

850 63.182 Statute of repose.--Notwithstanding s. 95.031 or s.
 851 95.11 or any other statute:

852 (1) An action or proceeding of any kind to vacate, set
 853 aside, or otherwise nullify a judgment of adoption or an
 854 underlying judgment terminating parental rights on any ground,
 855 including duress but excluding fraud, shall in no event be filed
 856 more than 1 year after entry of the judgment terminating
 857 parental rights.

858 (2) An action or proceeding of any kind to vacate, set
 859 aside, or otherwise nullify a judgment of adoption or an
 860 underlying judgment terminating parental rights on grounds of



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861 fraud shall in no event be filed more than 2 years after entry
862 of the judgment terminating parental rights.

863 Section 33. This act shall take effect upon becoming a
864 law.