



CHAMBER ACTION

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The Committee on Appropriations recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to probate and trusts; amending s. 731.103, F.S.; providing that fact that missing person was subject to a specific peril of death is evidence for a finding of a presumptive death; amending ss. 731.201 and 731.303, F.S.; revising the conflict of interest standard in the definitions of "beneficiary," "devisee," "interested person," and in judicial orders binding the trustee; amending s. 732.217, F.S.; eliminating requirement that property be homestead property to be excepted from the application of the Florida Uniform Disposition of Community Property Rights at Death Act; amending s. 732.502, F.S.; providing that military testamentary instruments executed pursuant to federal law are valid in this state; amending s. 732.603, F.S.; revising language with respect to antilapse provisions; amending s. 733.205, F.S.; revising language with respect to the probate of notarial wills; amending s. 733.212, F.S.; revising language with respect to the notice of



29 administration; amending s. 733.2121, F.S.; revising the  
30 time in which notice to creditors must be served; amending  
31 s. 733.608, F.S.; revising language with respect to the  
32 general power of the personal representative; amending s.  
33 733.609, F.S.; revising language with respect to awarding  
34 taxable costs and attorney's fees with respect to improper  
35 exercise of power or the breach of fiduciary duty;  
36 amending s. 734.1025, F.S., to conform to the amendment to  
37 s. 732.502, F.S.; amending s. 735.2063, F.S.; revising  
38 language with respect to notice to creditors; amending s.  
39 737.106, F.S.; revising language with respect to revocable  
40 trust prior to dissolution of marriage; amending s.  
41 737.2035, F.S.; revising language with respect to costs  
42 and attorney's fees in trust proceedings; amending s.  
43 737.204, F.S.; revising language with respect to  
44 proceedings for review of employment of agents and review  
45 of compensation of trustee and employees of trust;  
46 amending s. 737.404, F.S.; revising language with respect  
47 to powers exercisable by joint trustees; creating s.  
48 737.6035, F.S.; providing antilapse provision with respect  
49 to inter vivos trusts under certain circumstances;  
50 amending s. 737.627, F.S.; revising language with respect  
51 to costs and attorney's fees; reenacting ss. 709.08 and  
52 717.1243, F.S., to incorporate by reference the amendment  
53 of s. 731.201, F.S.; reenacting ss. 660.46, 731.302,  
54 737.303, and 737.307, F.S., to incorporate by reference  
55 the amendment to s. 731.303, F.S.; reenacting s. 382.025,  
56 F.S., to incorporate by reference the amendment to s.



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57 | 732.502, F.S.; reenacting ss. 732.604 and 732.801, F.S.,  
58 | to incorporate by reference the amendment to s. 732.603,  
59 | F.S.; reenacting s. 733.701, F.S., to incorporate by  
60 | reference the amendment to s. 733.2121, F.S.; reenacting  
61 | s. 63.182, F.S., to incorporate by reference the amendment  
62 | to s. 95.031, F.S.; providing an effective date.

63

64 | Be It Enacted by the Legislature of the State of Florida:

65

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

68 | 731.103 Evidence as to death or status.--In proceedings  
69 | under this code, the rules of evidence in civil actions are  
70 | applicable unless specifically changed by the code. The  
71 | following additional rules relating to determination of death  
72 | and status are applicable:

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



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85 any county of this state if the decedent was not a resident of  
86 Florida at the time his or her absence commenced.

87 Section 2. Subsections (2), (9), and (21) of section  
88 731.201, Florida Statutes, are amended to read:

89 731.201 General definitions.--Subject to additional  
90 definitions in subsequent chapters that are applicable to  
91 specific chapters or parts, and unless the context otherwise  
92 requires, in this code, in s. 409.9101, and in chapters 737,  
93 738, and 744:

94 (2) "Beneficiary" means heir at law in an intestate estate  
95 and devisee in a testate estate. The term "beneficiary" does not  
96 apply to an heir at law or a devisee after that person's  
97 interest in the estate has been satisfied. In the case of a  
98 devise to an existing trust or trustee, or to a trust or trustee  
99 described by will, ~~in the absence of a conflict of interest of~~  
100 ~~the trust,~~ the trustee is a beneficiary of the estate. Except as  
101 otherwise provided in this subsection, the beneficiary of the  
102 trust is not a beneficiary of the estate of which that trust or  
103 the trustee of that trust is a beneficiary. However, if each  
104 trustee is also a personal representative of the estate, the  
105 beneficiary or beneficiaries of the trust as defined in s.  
106 737.303(4)(b) shall be regarded as a beneficiary of the estate  
107 ~~An owner of a beneficial interest in the trust is a beneficiary~~  
108 ~~of the trust and is, in the absence of a conflict of interest of~~  
109 ~~the trust, not a beneficiary of the estate.~~

110 (9) "Devisee" means a person designated in a will or trust  
111 to receive a devise. Except as otherwise provided in this  
112 subsection, in the case of a devise to an existing trust or



113 trustee, or to a trust or trustee of a trust described by will,  
 114 the trust or trustee, rather than the beneficiaries of the  
 115 trust, is the devisee. However, if each trustee is also a  
 116 personal representative of the estate, the beneficiary or  
 117 beneficiaries of the trust as defined in s. 737.303(4)(b) shall  
 118 be regarded as a devisee ~~The beneficiaries of the trust are not~~  
 119 ~~devisees.~~

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

134 Section 3. Section 731.303, Florida Statutes, is amended  
 135 to read:

136 731.303 Representation.--In the administration of or in  
 137 judicial proceedings involving estates of decedents or trusts,  
 138 the following apply:

139 (1) Persons are bound by orders binding others in the  
 140 following cases:



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

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

150 1. Orders binding a guardian of the property bind the  
151 ward.

152 2. Orders binding a trustee bind beneficiaries of the  
153 trust in proceedings to probate a will, in establishing or  
154 adding to a trust, in reviewing the acts or accounts of a prior  
155 fiduciary, and in proceedings involving creditors or other third  
156 parties. However, for purposes of this section, a conflict of  
157 interest shall be deemed to exist when each trustee of a trust  
158 that is a beneficiary of the estate is also a personal  
159 representative of the estate.

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

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



168 (2) Orders binding a guardian of the person shall not bind  
169 the ward.

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

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

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

182 (4) If the court determines that representation of the  
183 interest would otherwise be inadequate, the court may, at any  
184 time, appoint a guardian ad litem to represent the interests of  
185 an incapacitated person, an unborn or unascertained person, a  
186 minor or any other person otherwise under a legal disability, or  
187 a person whose identity or address is unknown. If not precluded  
188 by conflict of interest, a guardian ad litem may be appointed to  
189 represent several persons or interests.

190 (5) When a sole holder or coholder of a general, special,  
191 or limited power of appointment, including an exercisable power  
192 of amendment or revocation over property in an estate or trust,  
193 is bound by:

194 (a) Agreements, waivers, consents, or approvals; or



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195 (b) Accounts, trust accountings, or other written reports  
196 that adequately disclose matters set forth therein,

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

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

205 732.217 Application.--Sections 732.216-732.228 apply to  
206 the disposition at death of the following property acquired by a  
207 married person:

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

211 (a) Was acquired with the rents, issues, or income of, the  
212 proceeds from, or in exchange for, property acquired as, or  
213 which became and remained, community property under the laws of  
214 another jurisdiction; or

215 (b) Is traceable to that community property.

216 Section 5. Subsections (3) and (4) of section 732.502,  
217 Florida Statutes, are renumbered as subsections (4) and (5),  
218 respectively, and a new subsection (3) is added to said section,  
219 to read:

220 732.502 Execution of wills.--Every will must be in writing  
221 and executed as follows:





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

226           Section 6. Paragraph (c) of subsection (1) and paragraph  
 227 (c) of subsection (2) of section 732.603, Florida Statutes, are  
 228 amended to read:

229           732.603 Antilapse; deceased devisee; class gifts.--Unless  
 230 a contrary intention appears in the will:

231           (1) If a devisee or a beneficiary of a trust created by a  
 232 will who is a grandparent, or a lineal descendant of a  
 233 grandparent, of the testator:

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

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

243           (2) If a devisee or a beneficiary of a trust created by a  
 244 will who is not a grandparent, or a descendant of a grandparent,  
 245 of the testator:

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

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249 then the testamentary disposition to the devisee or beneficiary  
250 shall lapse unless an intention to substitute another appears in  
251 the will.

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

254 733.205 Probate of notarial will.--

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

267 Section 8. Paragraph (c) of subsection (1) of section  
268 733.212, Florida Statutes, is amended to read:

269 733.212 Notice of administration; filing of objections.--

270 (1) The personal representative shall promptly serve a  
271 copy of the notice of administration on the following persons  
272 who are known to the personal representative:

273 (c) The trustee of any trust described in s. 733.707(3)  
274 and each beneficiary of the trust as defined in s.  
275 737.303(4)(b), if each trustee is also a personal representative  
276 of the estate; and



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

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

285 733.2121 Notice to creditors; filing of claims.--

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

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

300 733.608 General power of the personal representative.--

301 (2) If property that reasonably appears to the personal  
302 representative to be protected homestead is not occupied by ~~in~~  
303 ~~the possession of~~ a person who appears to have an interest in  
304 the property, the personal representative is authorized, but not



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305 required, to take possession of that property for the limited  
306 purpose of preserving, insuring, and protecting it for the  
307 person having an interest in the property ~~heir or devisee,~~  
308 pending a determination of its homestead status. If the personal  
309 representative takes possession of that property, any rents and  
310 revenues may be collected by the personal representative for the  
311 account of the heir or devisee, but the personal representative  
312 shall have no duty to rent or otherwise make the property  
313 productive.

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

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



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

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

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

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



361           (a) The name and address of the personal representative  
 362 and the personal representative's attorney;

363           (b) The legal description of the property;

364           (c) The name of the decedent and also, to the extent known  
 365 to the personal representative, the name and address of each  
 366 person appearing to have an interest in the property; and

367           (d) That the personal representative has expended or is  
 368 obligated to expend funds to preserve, maintain, insure, and  
 369 protect the property and that the lien stands as security for  
 370 recovery of those expenditures and obligations incurred,  
 371 including, but not limited to, fees and costs.

372  
 373 Substantial compliance with the foregoing provisions shall  
 374 render the notice in comportment with this section.

375           (5) The lien shall terminate upon the earliest of:

376           (a) Recording a satisfaction or release signed by the  
 377 personal representative in the official records of the county  
 378 where the property is located;

379           (b) The discharge of the personal representative when the  
 380 estate administration is complete;

381           (c) One year from the recording of the lien in the  
 382 official records unless a proceeding to determine the debt or  
 383 enforce the lien has been filed; or

384           (d) The entry of an order releasing the lien.

385           (6) Within 14 days after receipt of the written request of  
 386 any interested person, the personal representative shall deliver  
 387 to the requesting person at a place designated in the written  
 388 request an estoppel letter setting forth the unpaid balance of



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389 the debt secured by the lien referred to in this section. After  
390 complete satisfaction of the debt secured by the lien, the  
391 personal representative shall record within 30 days after  
392 complete payment, a satisfaction of the lien in the official  
393 records of the county where the property is located. If a  
394 judicial proceeding is necessary to compel compliance with the  
395 provisions of this subsection, the prevailing party shall be  
396 entitled to an award of attorney's fees and costs.

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

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

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

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

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

413 (10) A personal representative shall not be liable for  
414 failure to attempt to enforce collection of the debt if the  
415 personal representative reasonably believes it would have been  
416 economically impracticable.



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417       (11) The personal representative shall not be liable for  
418 failure to take possession of the protected homestead or to  
419 expend funds on its behalf. In the event that the property is  
420 determined by the court not to be protected homestead,  
421 subsections (2)-(10) shall not apply and any liens previously  
422 filed shall be deemed released upon recording of the order in  
423 the official records of the county where the property is  
424 located.

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

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





444 Section 11. Section 733.609, Florida Statutes, is amended  
445 to read:

446 733.609 Improper exercise of power; breach of fiduciary  
447 duty.--

448 (1) A personal representative's fiduciary duty is the same  
449 as the fiduciary duty of a trustee of an express trust, and a  
450 personal representative is liable to interested persons for  
451 damage or loss resulting from the breach of this duty. In all  
452 actions for breach of fiduciary duty or challenging the exercise  
453 of or failure to exercise a personal representative's powers,  
454 the court shall award taxable costs as in chancery actions,  
455 including attorney's fees.

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

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

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

466 734.1025 Nonresident decedent's testate estate with  
467 property not exceeding \$50,000 in this state; determination of  
468 claims.--

469 (1) When a nonresident decedent dies testate and leaves  
470 property subject to administration in this state the gross value  
471 of which does not exceed \$50,000 at the date of death, the



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472 foreign personal representative of the estate before the  
 473 expiration of 2 years after the decedent's death may file in the  
 474 circuit court of the county where any property is located an  
 475 authenticated transcript of so much of the foreign proceedings  
 476 as will show the will and beneficiaries of the estate, as  
 477 provided in the Florida Probate Rules. The court shall admit the  
 478 will and any codicils to probate if they comply with s.  
 479 732.502(1), ~~or~~ (2), or (3).

480 Section 13. Section 735.2063, Florida Statutes, is amended  
 481 to read:

482 735.2063 Notice to creditors.--

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

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

497 Section 14. Section 737.106, Florida Statutes, is amended  
 498 to read:



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

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

514           737.2035 Costs and attorney's fees in trust proceedings.--

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

521           Section 16. Section 737.204, Florida Statutes, is amended  
522 to read:

523           737.204 Proceedings for review of employment of agents and  
524 review of compensation of trustee and employees of trust.--

525           (1) After notice to all interested persons, the court may  
526 review the propriety of the employment by a trustee of any



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527 person, including any attorney, auditor, investment adviser, or  
528 other specialized agent or assistant, and the reasonableness of  
529 any the compensation paid to that of any person or to so  
530 ~~employed and of the compensation determined by the trustee for~~  
531 ~~his or her own services. A person who has received excessive~~  
532 ~~compensation from a trust may be ordered to make a refund of the~~  
533 ~~excess.~~

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

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

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



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555 ~~person receiving formal notice to the extent of the person's~~  
556 ~~interest in the trust; or~~

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

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

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

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

579 (7) In a proceeding pursuant to subsection (2), the  
580 petitioner may serve formal notice as provided in the Florida  
581 Probate Rules, and such notice shall be sufficient for the court



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582 to acquire jurisdiction over the person receiving it to the  
583 extent of the person's interest in the trust.

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

586 737.404 Powers exercisable by joint trustees; liability.--

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

597 Section 18. Section 737.6035, Florida Statutes, is created  
598 to read:

599 737.6035 Antilapse; deceased trust beneficiary; class  
600 gifts.--Unless a contrary intention appears in the inter vivos  
601 trust:

602 (1) If a beneficiary of an inter vivos trust who is a  
603 grandparent, or a lineal descendant of a grandparent, of the  
604 grantor:

605 (a) Is dead at the time of the execution of the inter  
606 vivos trust or at the termination of a trust interest created by  
607 an inter vivos trust;

608 (b) Fails to survive the grantor; or



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

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

618 (2) If a trust beneficiary of an inter vivos trust who is  
619 not a grandparent, or a descendant of a grandparent, of the  
620 grantor:

621 (a) Is dead at the time of the execution of the inter  
622 vivos trust or at the termination of a trust interest created in  
623 an inter vivos trust;

624 (b) Fails to survive the grantor; or

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

627  
628 then the trust disposition to the trust beneficiary shall lapse  
629 unless an intention to substitute another appears in the inter  
630 vivos trust.

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

634 Section 19. Section 737.627, Florida Statutes, is amended  
635 to read:

636 737.627 Costs and attorney's fees.--



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

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

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

650           Section 20. For the purpose of incorporating the amendment  
651 to section 731.201, Florida Statutes, in references thereto,  
652 subsection (8) of section 709.08, Florida Statutes, is reenacted  
653 to read:

654           709.08 Durable power of attorney.--

655           (8) STANDARD OF CARE.--Except as otherwise provided in  
656 paragraph (4)(e), an attorney in fact is a fiduciary who must  
657 observe the standards of care applicable to trustees as  
658 described in s. 737.302. The attorney in fact is not liable to  
659 third parties for any act pursuant to the durable power of  
660 attorney if the act was authorized at the time. If the exercise  
661 of the power is improper, the attorney in fact is liable to  
662 interested persons as described in s. 731.201 for damage or loss  
663 resulting from a breach of fiduciary duty by the attorney in  
664 fact to the same extent as the trustee of an express trust.





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665 Section 21. For the purpose of incorporating the amendment  
666 to section 731.201, Florida Statutes, in references thereto,  
667 subsection (1) of section 717.1243, Florida Statutes, is  
668 reenacted to read:

669 717.1243 Small estate accounts.--

670 (1) A claim for unclaimed property made by a beneficiary,  
671 as defined in s. 731.201, of a deceased owner need not be  
672 accompanied by an order of a probate court if the claimant files  
673 with the department an affidavit, signed by all beneficiaries,  
674 stating that all the beneficiaries have amicably agreed among  
675 themselves upon a division of the estate and that all funeral  
676 expenses, expenses of the last illness, and any other lawful  
677 claims have been paid. If the owner died testate, the claim  
678 shall be accompanied by a copy of the will.

679 Section 22. For the purpose of incorporating the amendment  
680 to section 731.303, Florida Statutes, in references thereto,  
681 subsections (3) and (10) of section 660.46, Florida Statutes,  
682 are reenacted to read:

683 660.46 Substitution of fiduciaries.--

684 (3) Unless a waiver or consent shall be filed in the  
685 proceedings as provided in subsection (4), the provisions of s.  
686 731.301(1) and (2) shall apply with respect to notice of the  
687 proceedings to all persons who are then cofiduciaries with the  
688 original fiduciary, other than a person joining as a petitioner  
689 in the proceedings; to all persons named in the governing  
690 instrument as substitutes or successors to the fiduciary  
691 capacity of the original fiduciary; to the persons then living  
692 who are entitled under the governing instrument to appoint a



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693 substitute or successor to act in the fiduciary capacity of the  
694 original fiduciary; to all vested beneficiaries of the fiduciary  
695 account; and to all then-living originators of the governing  
696 instrument. Unless a waiver or consent shall be filed in the  
697 proceedings as provided in subsection (4), the provisions of s.  
698 731.301 shall apply with respect to notice to all contingent  
699 beneficiaries of the fiduciary account. Only the persons or  
700 classes of persons described in the foregoing provisions of this  
701 subsection shall be deemed to be interested persons for the  
702 purposes of this section and the proceedings and notices  
703 provided for in this section; and the provisions of ss.  
704 731.301(3) and 731.303(3), (4), and (5), relating to notice  
705 requirements, the effect of notice, and representation of  
706 interests, shall apply to the proceedings provided for in this  
707 section.

708 (10) A beneficiary has received a final trust disclosure  
709 document or a limitation notice if, when the beneficiary is an  
710 adult, it is received by him or her or if, when the beneficiary  
711 is a minor or a disabled person, it is received by his or her  
712 representative as defined in s. 731.303.

713 Section 23. For the purpose of incorporating the amendment  
714 to section 731.303, Florida Statutes, in references thereto,  
715 section 731.302, Florida Statutes, is reenacted to read:

716 731.302 Waiver and consent by interested  
717 person.--Subsequent to the filing of a petition for  
718 administration, an interested person, including a guardian ad  
719 litem, administrator ad litem, guardian of the property,  
720 personal representative, trustee, or other fiduciary, or a sole



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721 holder or all coholders of a power of revocation or a power of  
722 appointment, may waive, to the extent of that person's interest  
723 or the interest which that person represents, subject to the  
724 provisions of ss. 731.303 and 733.604, any right or notice or  
725 the filing of any document, exhibit, or schedule required to be  
726 filed and may consent to any action or proceeding which may be  
727 required or permitted by this code.

728 Section 24. For the purpose of incorporating the amendment  
729 to section 731.303, Florida Statutes, in references thereto,  
730 paragraphs (d) and (e) of subsection (4) of section 737.303,  
731 Florida Statutes, are reenacted to read:

732 737.303 Duty to inform and account to beneficiaries.--The  
733 trustee shall keep the beneficiaries of the trust reasonably  
734 informed of the trust and its administration. The trustee's duty  
735 to inform and account includes, but is not limited to, the  
736 following:

737 (4)

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

741 (e) All rights provided a beneficiary under this section  
742 may be asserted by a legal representative or natural guardian of  
743 the beneficiary. Notice under subsection (1) and a trust  
744 accounting under paragraph (a) provided to a representative of  
745 the beneficiary as defined in s. 731.303 shall bind the  
746 beneficiary, and the trustee shall not be required to provide  
747 such notice or trust accounting to any beneficiary who would be  
748 bound by an order binding on a representative of the beneficiary



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749 | under s. 731.303, if such notice or trust accounting,  
750 | respectively, is provided to that representative.

751 |       Section 25. For the purpose of incorporating the amendment  
752 | to section 731.303, Florida Statutes, in references thereto,  
753 | subsection (4) of section 737.307, Florida Statutes, is  
754 | reenacted to read:

755 |       737.307 Limitations on proceedings against trustees after  
756 | beneficiary receives trust disclosure documents.--

757 |       (4) A beneficiary has received a trust disclosure document  
758 | or a limitation notice if, being an adult, it is received by the  
759 | beneficiary or if, being a minor, disabled person, or person who  
760 | may take by virtue of the exercise or nonexercise of a power of  
761 | appointment, it is received by the beneficiary's representative  
762 | as defined in s. 731.303.

763 |       Section 26. For the purpose of incorporating the amendment  
764 | to section 732.502, Florida Statutes, in references thereto,  
765 | paragraph (a) of subsection (2) of section 382.025, Florida  
766 | Statutes, is reenacted to read:

767 |       382.025 Certified copies of vital records;  
768 | confidentiality; research.--

769 |       (2) OTHER RECORDS.--

770 |       (a) The department shall authorize the issuance of a  
771 | certified copy of all or part of any marriage, dissolution of  
772 | marriage, or death or fetal death certificate, excluding that  
773 | portion which is confidential and exempt from the provisions of  
774 | s. 119.07(1) as provided under s. 382.008, to any person  
775 | requesting it upon receipt of a request and payment of the fee  
776 | prescribed by this section. A certification of the death or



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777 fetal death certificate which includes the confidential portions  
778 shall be issued only:

779 1. To the registrant's spouse or parent, or to the  
780 registrant's child, grandchild, or sibling, if of legal age, or  
781 to any person who provides a will that has been executed  
782 pursuant to s. 732.502, insurance policy, or other document that  
783 demonstrates his or her interest in the estate of the  
784 registrant, or to any person who provides documentation that he  
785 or she is acting on behalf of any of them;

786 2. To any agency of the state or local government or the  
787 United States for official purposes upon approval of the  
788 department; or

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

790 Section 27. For the purpose of incorporating the amendment  
791 to section 732.603, Florida Statutes, in references thereto,  
792 section 732.604, Florida Statutes, is reenacted to read:

793 732.604 Failure of testamentary provision.--

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

797 (2) Except as provided in s. 732.603, if the residue is  
798 devised to two or more persons and the devise to one of the  
799 residuary devisees fails for any reason, that devise passes to  
800 the other residuary devisee, or to the other residuary devisees  
801 in proportion to their interests in the residue.

802 Section 28. For the purpose of incorporating the amendment  
803 to section 732.603, Florida Statutes, in references thereto,



804 paragraph (a) of subsection (3) of section 732.801, Florida  
805 Statutes, is reenacted to read:

806 732.801 Disclaimer of interests in property passing by  
807 will or intestate succession or under certain powers of  
808 appointment.--

809 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

810 (a) Unless the decedent or a donee of a power of  
811 appointment has otherwise provided by will or other appropriate  
812 instrument with reference to the possibility of a disclaimer by  
813 the beneficiary, the interest disclaimed shall descend, be  
814 distributed, or otherwise be disposed of in the same manner as  
815 if the disclaimant had died immediately preceding the death or  
816 other event that caused the disclaimant's interest to become  
817 indefeasibly fixed both in quality and quantity. The disclaimer  
818 shall relate to that date for all purposes, whether recorded  
819 before or after the death or other event. An interest in  
820 property disclaimed shall never vest in the disclaimant. If the  
821 provisions of s. 732.603 would have been applicable had the  
822 disclaimant in fact died immediately preceding the death or  
823 other event, they shall be applicable to the disclaimed  
824 interest.

825 Section 29. For the purpose of incorporating the amendment  
826 to section 733.2121, Florida Statutes, in references thereto,  
827 section 733.701, Florida Statutes, is reenacted to read:

828 733.701 Notifying creditors.--Unless creditors' claims are  
829 otherwise barred by s. 733.710, every personal representative  
830 shall cause notice to creditors to be published and served under  
831 s. 733.2121.



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832 Section 30. For the purpose of incorporating the amendment  
833 to section 95.031, Florida Statutes, in references thereto,  
834 section 63.182, Florida Statutes, is reenacted to read:

835 63.182 Statute of repose.--Notwithstanding s. 95.031 or s.  
836 95.11 or any other statute:

837 (1) An action or proceeding of any kind to vacate, set  
838 aside, or otherwise nullify a judgment of adoption or an  
839 underlying judgment terminating parental rights on any ground,  
840 including duress but excluding fraud, shall in no event be filed  
841 more than 1 year after entry of the judgment terminating  
842 parental rights.

843 (2) An action or proceeding of any kind to vacate, set  
844 aside, or otherwise nullify a judgment of adoption or an  
845 underlying judgment terminating parental rights on grounds of  
846 fraud shall in no event be filed more than 2 years after entry  
847 of the judgment terminating parental rights.

848 Section 31. This act shall take effect upon becoming a  
849 law.

850