

By Senator Campbell

32-1038-03

See HB 1749

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

1 attorney's fees with respect to improper
2 exercise of power or the breach of fiduciary
3 duty; amending s. 734.1025, F.S., to conform to
4 the amendment to s. 732.502, F.S.; amending s.
5 735.2063, F.S.; revising provisions with
6 respect to notice to creditors; amending s.
7 737.106, F.S.; revising provisions with respect
8 to revocable trust prior to dissolution of
9 marriage; amending s. 737.2035, F.S.; revising
10 provisions with respect to costs and attorney's
11 fees in trust proceedings; amending s. 737.204,
12 F.S.; revising provisions with respect to
13 proceedings for review of employment of agents
14 and review of compensation of trustee and
15 employees of trust; amending s. 737.404, F.S.;
16 revising provisions with respect to powers
17 exercisable by joint trustees; creating s.
18 737.6035, F.S.; providing antilapse provisions
19 with respect to inter vivos trusts under
20 certain circumstances; amending s. 737.627,
21 F.S.; revising provisions with respect to costs
22 and attorney's fees; amending s. 95.031, F.S.;
23 including constructive fraud in actions based
24 upon fraud for statute-of-limitations
25 computation; providing such amendments are
26 remedial in nature and have retrospective
27 effect; reenacting ss. 709.08 and 717.1243,
28 F.S., to incorporate by reference the amendment
29 of s. 731.201, F.S.; reenacting ss. 660.46,
30 731.302, 737.303, and 737.307, F.S., to
31 incorporate by reference the amendment to s.

1 731.303, F.S.; reenacting s. 382.025, F.S., to
2 incorporate by reference the amendment to s.
3 732.502, F.S.; reenacting ss. 732.604 and
4 732.801, F.S., to incorporate by reference the
5 amendment to s. 732.603, F.S.; reenacting s.
6 733.701, F.S., to incorporate by reference the
7 amendment to s. 733.2121, F.S.; reenacting s.
8 63.182, F.S., to incorporate by reference the
9 amendment to s. 95.031, F.S.; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (3) of section 731.103, Florida
15 Statutes, is amended to read:

16 731.103 Evidence as to death or status.--In
17 proceedings under this code, the rules of evidence in civil
18 actions are applicable unless specifically changed by the
19 code. The following additional rules relating to determination
20 of death and status are applicable:

21 (3) A person who is absent from the place of his or
22 her last known domicile for a continuous period of 5 years and
23 whose absence is not satisfactorily explained after diligent
24 search and inquiry is presumed to be dead. The person's death
25 is presumed to have occurred at the end of the period unless
26 there is evidence establishing that death occurred earlier.
27 Evidence showing that the absent person was exposed to a
28 specific peril of death may be a sufficient basis for the
29 court determining at any time after such exposure that he or
30 she died less than 5 years after the date on which his or her
31 absence commenced. A petition for this determination shall be

1 filed in the county in Florida where the decedent maintained
2 his or her domicile or in any county of this state if the
3 decedent was not a resident of Florida at the time his or her
4 absence commenced.

5 Section 2. Subsections (2), (9), and (21) of section
6 731.201, Florida Statutes, are amended to read:

7 731.201 General definitions.--Subject to additional
8 definitions in subsequent chapters that are applicable to
9 specific chapters or parts, and unless the context otherwise
10 requires, in this code, in s. 409.9101, and in chapters 737,
11 738, and 744:

12 (2) "Beneficiary" means heir at law in an intestate
13 estate and devisee in a testate estate. The term "beneficiary"
14 does not apply to an heir at law or a devisee after that
15 person's interest in the estate has been satisfied. In the
16 case of a devise to an existing trust or trustee, or to a
17 trust or trustee described by will, ~~in the absence of a~~
18 ~~conflict of interest of the trust,~~ the trustee is a
19 beneficiary of the estate. Except as otherwise provided in
20 this subsection, the beneficiary of the trust is not a
21 beneficiary of the estate of which that trust or the trustee
22 of that trust is a beneficiary. However, if each trustee is
23 also a personal representative of the estate, the beneficiary
24 or beneficiaries of the trust as defined in s. 737.303(4)(b)
25 shall be regarded as a beneficiary of the estate ~~An owner of a~~
26 ~~beneficial interest in the trust is a beneficiary of the trust~~
27 ~~and is, in the absence of a conflict of interest of the trust,~~
28 ~~not a beneficiary of the estate.~~

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

1 or trustee, or to a trust or trustee of a trust described by
2 will, the trust or trustee, rather than the beneficiaries of
3 the trust, is the devisee. However, if each trustee is also a
4 personal representative of the estate, the beneficiary or
5 beneficiaries of the trust as defined in s. 737.303(4)(b)
6 shall be regarded as a devisee ~~The beneficiaries of the trust~~
7 ~~are not devisees.~~

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

23 Section 3. Section 731.303, Florida Statutes, is
24 amended to read:

25 731.303 Representation.--In the administration of or
26 in judicial proceedings involving estates of decedents or
27 trusts, the following apply:

28 (1) Persons are bound by orders binding others in the
29 following cases:

30 (a) Orders binding the sole holder or all coholders of
31 a power of revocation or a general, special, or limited power

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

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

9 1. Orders binding a guardian of the property bind the
10 ward.

11 2. Orders binding a trustee bind beneficiaries of the
12 trust in proceedings to probate a will, in establishing or
13 adding to a trust, in reviewing the acts or accounts of a
14 prior fiduciary, and in proceedings involving creditors or
15 other third parties. However, for purposes of this section, a
16 conflict of interest shall be deemed to exist when each
17 trustee of a trust that is a beneficiary of the estate is also
18 a personal representative of the estate.

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

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

27 (2) Orders binding a guardian of the person shall not
28 bind the ward.

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

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

6 (b) Notice is given to unborn or unascertained persons
7 who are not represented pursuant to paragraph (1)(a) or
8 paragraph (1)(b) by giving notice to all known persons whose
9 interests in the proceedings are the same as, or of a greater
10 quality than, those of the unborn or unascertained persons.

11 (4) If the court determines that representation of the
12 interest would otherwise be inadequate, the court may, at any
13 time, appoint a guardian ad litem to represent the interests
14 of an incapacitated person, an unborn or unascertained person,
15 a minor or any other person otherwise under a legal
16 disability, or a person whose identity or address is unknown.
17 If not precluded by conflict of interest, a guardian ad litem
18 may be appointed to represent several persons or interests.

19 (5) When a sole holder or coholder of a general,
20 special, or limited power of appointment, including an
21 exercisable power of amendment or revocation over property in
22 an estate or trust, is bound by:

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

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

26
27 then all persons who may take by virtue of, and whose
28 interests are subject to, the exercise or nonexercise of the
29 power are also bound, but only to the extent of their
30 interests which could otherwise be affected by the exercise or
31 nonexercise of the power.

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

3 732.217 Application.--Sections 732.216-732.228 apply
4 to the disposition at death of the following property acquired
5 by a married person:

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

9 (a) Was acquired with the rents, issues, or income of,
10 the proceeds from, or in exchange for, property acquired as,
11 or which became and remained, community property under the
12 laws of another jurisdiction; or

13 (b) Is traceable to that community property.

14 Section 5. Subsections (3) and (4) of section 732.502,
15 Florida Statutes, are renumbered as subsections (4) and (5),
16 respectively, and a new subsection (3) is added to that
17 section, to read:

18 732.502 Execution of wills.--Every will must be in
19 writing and executed as follows:

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

24 Section 6. Paragraph (c) of subsection (1) and
25 paragraph (c) of subsection (2) of section 732.603, Florida
26 Statutes, are amended to read:

27 732.603 Antilapse; deceased devisee; class
28 gifts.--Unless a contrary intention appears in the will:

29 (1) If a devisee or a beneficiary of a trust created
30 by a will who is a grandparent, or a lineal descendant of a
31 grandparent, of the testator:

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

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

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

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

15
16 then the testamentary disposition to the devisee or
17 beneficiary shall lapse unless an intention to substitute
18 another appears in the will.

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

21 733.205 Probate of notarial will.--

22 (1) When a copy of a notarial will in the possession
23 of a notary entitled to its custody in a foreign state or
24 country, the laws of which state or country require that the
25 will remain in the custody of the notary, duly authenticated
26 by the notary, whose official position, signature, and seal of
27 office are further authenticated by an American consul, vice
28 consul, or other American consular officer within whose
29 jurisdiction the notary is a resident, or whose official
30 position, signature, and seal of office have been
31 authenticated according to the requirements of the Hague

1 Convention of 1961, is presented to the court, it may be
2 admitted to probate if the original could have been admitted
3 to probate in this state.

4 Section 8. Paragraph (c) of subsection (1) of section
5 733.212, Florida Statutes, is amended to read:

6 733.212 Notice of administration; filing of
7 objections.--

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

11 (c) The trustee of any trust described in s.
12 733.707(3) and each beneficiary of the trust as defined in s.
13 737.303(4)(b), if each trustee is also a personal
14 representative of the estate; and

15
16 in the manner provided for service of formal notice, unless
17 served under s. 733.2123. The personal representative may
18 similarly serve a copy of the notice on any devisees under a
19 known prior will or heirs or others who claim or may claim an
20 interest in the estate.

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

23 733.2121 Notice to creditors; filing of claims.--

24 (1) Unless creditors' claims are otherwise barred by
25 s. 733.710, the personal representative shall promptly publish
26 a notice to creditors. The notice shall contain the name of
27 the decedent, the file number of the estate, the designation
28 and address of the court in which the proceedings are pending,
29 the name and address of the personal representative, the name
30 and address of the personal representative's attorney, and the
31 date of first publication. The notice shall state that

1 creditors must file claims against the estate with the court
2 during within the time periods set forth in s. ~~ss.~~733.702 and
3 733.710, or be forever barred.

4 Section 10. Subsection (2) of section 733.608, Florida
5 Statutes, is amended, and subsections (3)-(13) are added to
6 that section, to read:

7 733.608 General power of the personal
8 representative.--

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

23 (3) If the personal representative expends funds or
24 incurs obligations to preserve, maintain, insure, or protect
25 the property referenced in subsection (2), the personal
26 representative shall be entitled to a lien on that property
27 and its revenues to secure repayment of those expenditures and
28 obligations incurred. These expenditures and obligations
29 incurred, including, but not limited to, fees and costs, shall
30 constitute a debt owed to the personal representative that is
31 charged against and which may be secured by a lien on the

1 protected homestead, as provided in this section. The debt
2 shall include any amounts paid for these purposes after the
3 decedent's death and prior to the personal representative's
4 appointment to the extent later ratified by the personal
5 representative in the court proceeding provided for in this
6 section.

7 (a) On the petition of the personal representative or
8 any interested person, the court having jurisdiction of the
9 administration of the decedent's estate shall adjudicate the
10 amount of the debt after formal notice to the persons
11 appearing to have an interest in the property.

12 (b) The persons having an interest in the protected
13 homestead shall have no personal liability for the repayment
14 of the above noted debt. The personal representative may
15 enforce payment of the debt through any of the following
16 methods:

17 1. By foreclosure of the lien as provided in this
18 section;

19 2. By offset of the debt against any other property in
20 the personal representative's possession that otherwise would
21 be distributable to any person having an interest in the
22 protected homestead, but only to the extent of the fraction of
23 the total debt owed to the personal representative the
24 numerator of which is the value of that person's interest in
25 the protected homestead and the denominator of which is the
26 total value of the protected homestead; or

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

29 (4) The personal representative's lien shall attach to
30 the property and take priority as of the date and time a
31 notice of that lien is recorded in the official records of the

1 county where that property is located and the lien may secure
2 expenditures and obligations incurred, including, but not
3 limited to, fees and costs made before or after recording the
4 notice. The notice of lien may be recorded prior to the
5 adjudication of the amount of the debt. The notice of lien
6 also shall be filed in the probate proceeding but failure to
7 do so shall not affect the validity of the lien. A copy of the
8 notice of lien shall be served by formal notice upon each
9 person appearing to have an interest in the property. The
10 notice of lien shall state:

11 (a) The name and address of the personal
12 representative and the personal representative's attorney;

13 (b) The legal description of the property;

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

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

22
23 Substantial compliance with the foregoing provisions shall
24 render the notice in comportment with this section.

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

26 (a) Recording a satisfaction or release signed by the
27 personal representative in the official records of the county
28 where the property is located;

29 (b) The discharge of the personal representative when
30 the estate administration is complete;

31

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

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

5 (6) Within 14 days after receipt of the written
6 request of any interested person, the personal representative
7 shall deliver to the requesting person at a place designated
8 in the written request an estoppel letter setting forth the
9 unpaid balance of the debt secured by the lien referred to in
10 this section. After complete satisfaction of the debt secured
11 by the lien, the personal representative shall record within
12 30 days after complete payment, a satisfaction of the lien in
13 the official records of the county where the property is
14 located. If a judicial proceeding is necessary to compel
15 compliance with the provisions of this subsection, the
16 prevailing party shall be entitled to an award of attorney's
17 fees and costs.

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

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

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

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

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

3 (10) A personal representative shall not be liable for
4 failure to attempt to enforce collection of the debt if the
5 personal representative reasonably believes it would have been
6 economically impracticable.

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

15 (12) Upon the petition of an interested party to
16 accommodate a sale or the encumbrance of the protected
17 homestead, the court may transfer the lien provided for in
18 this section from the property to the proceeds of the sale or
19 encumbrance by requiring the deposit of the proceeds into a
20 restricted account subject to the lien. The court shall have
21 continuing jurisdiction over the funds deposited. The
22 transferred lien shall attach only to the amount asserted by
23 the personal representative and any proceeds in excess of that
24 amount shall not be subject to the lien or otherwise
25 restricted under this section. Alternatively, the personal
26 representative and the apparent owners of the protected
27 homestead may agree to retain in escrow the amount demanded as
28 reimbursement by the personal representative, to be held there
29 under the continuing jurisdiction of the court pending a final
30 determination of the amount properly reimbursable to the
31 personal representative under this section.

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

3 Section 11. Section 733.609, Florida Statutes, is
4 amended to read:

5 733.609 Improper exercise of power; breach of
6 fiduciary duty.--

7 (1) A personal representative's fiduciary duty is the
8 same as the fiduciary duty of a trustee of an express trust,
9 and a personal representative is liable to interested persons
10 for damage or loss resulting from the breach of this duty. In
11 all actions for breach of fiduciary duty or challenging the
12 exercise of or failure to exercise a personal representative's
13 powers, the court shall award taxable costs as in chancery
14 actions, including attorney's fees.

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

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

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

25 734.1025 Nonresident decedent's testate estate with
26 property not exceeding \$50,000 in this state; determination of
27 claims.--

28 (1) When a nonresident decedent dies testate and
29 leaves property subject to administration in this state the
30 gross value of which does not exceed \$50,000 at the date of
31 death, the foreign personal representative of the estate

1 before the expiration of 2 years after the decedent's death
2 may file in the circuit court of the county where any property
3 is located an authenticated transcript of so much of the
4 foreign proceedings as will show the will and beneficiaries of
5 the estate, as provided in the Florida Probate Rules. The
6 court shall admit the will and any codicils to probate if they
7 comply with s. 732.502(1), or (2), or (3).

8 Section 13. Section 735.2063, Florida Statutes, is
9 amended to read:

10 735.2063 Notice to creditors.--

11 (1) Any person who has obtained an order of summary
12 administration may publish a notice to creditors according to
13 the relevant requirements of s. 733.2121, notifying all
14 persons having claims or demands against the estate of the
15 decedent that an order of summary administration has been
16 entered by the court. The notice shall specify the total value
17 of the estate and the names and addresses of those to whom it
18 has been assigned by the order.

19 (2) If proof of publication of the notice is filed
20 with the court, all claims and demands of creditors against
21 the estate of the decedent who are not known or are not
22 reasonably ascertainable shall be forever barred unless the
23 claims and demands are filed with the court within 3 months
24 after the first publication of the notice.

25 Section 14. Section 737.106, Florida Statutes, is
26 amended to read:

27 737.106 Revocable trust prior to dissolution of
28 marriage.--Unless the trust instrument or the judgment for
29 dissolution of marriage or divorce expressly provides
30 otherwise, if a revocable trust is executed by a husband or
31 wife as settlor prior to annulment of the marriage or entry of

1 a judgment for dissolution of marriage or divorce of settlor
2 from settlor's spouse, then any provision of the trust which
3 affects the settlor's ~~divorced~~ spouse will become void upon
4 annulment of the marriage or entry of the judgment of
5 dissolution of marriage or divorce, and any such trust will be
6 administered and construed as if the settlor's ~~divorced~~ spouse
7 had died on the date of the annulment or upon entry of the
8 judgment for dissolution of marriage or divorce.

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

11 737.2035 Costs and attorney's fees in trust
12 proceedings.--

13 (2) Any attorney who has rendered services to a trust
14 may be awarded reasonable compensation from the trust. The
15 attorney may apply to the court for an order awarding
16 attorney' s fees, and, after notice and service upon the
17 trustee and all beneficiaries entitled to an accounting under
18 s. 737.303, the court shall enter its order on the fee
19 application.

20 Section 16. Section 737.204, Florida Statutes, is
21 amended to read:

22 737.204 Proceedings for review of employment of agents
23 and review of compensation of trustee and employees of
24 trust.--

25 (1) After notice to all interested persons, the court
26 may review the propriety of the employment by a trustee of any
27 person, including any attorney, auditor, investment adviser,
28 or other specialized agent or assistant, and the
29 reasonableness of any the compensation paid to that of any
30 person or to ~~so employed and of the compensation determined by~~
31 ~~the trustee for his or her own services. A person who has~~

1 ~~received excessive compensation from a trust may be ordered to~~
2 ~~make a refund of the excess.~~

3 (2) If the settlor's estate is being probated, and the
4 settlor's trust or the trustee of the settlor's trust is a
5 beneficiary under the settlor's will,the trustee, any person
6 employed by the trustee ~~the attorney~~, or any interested person
7 may have the propriety of employment and the reasonableness of
8 the compensation of the trustee or any person employed by the
9 trustee determined in the probate proceeding.

10 (3) The burden of proof of propriety of the employment
11 and the reasonableness of the compensation shall be upon the
12 trustee and the person employed by the trustee. Any person who
13 is determined to have received excessive compensation from a
14 trust for services rendered may be ordered to make appropriate
15 refunds ~~In any proceeding under this section the petitioner~~
16 ~~shall either:~~

17 (a) ~~Serve notice on all interested persons in the~~
18 ~~manner provided for service of formal notice under s. 731.301,~~
19 ~~together with a notice advising the interested person that an~~
20 ~~answer to the petition must be filed and served on petitioner~~
21 ~~within 20 days from the service of the petition or the~~
22 ~~petition may be considered ex parte, and such notice shall be~~
23 ~~sufficient for the court to acquire jurisdiction for this~~
24 ~~proceeding over the person receiving formal notice to the~~
25 ~~extent of the person's interest in the trust; or~~

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

28 (4) Court proceedings to determine reasonable
29 compensation of a trustee or any person employed by a trustee,
30 if required, are a part of the trust administration process.
31 The costs, including attorney's fees, of the person assuming

1 the burden of proof of propriety of the employment and
2 reasonableness of the compensation shall be determined by the
3 court and paid from the assets of the trust unless the court
4 finds the compensation paid or requested to be substantially
5 unreasonable. The court shall direct from which part of the
6 trust assets the compensation shall be paid ~~Persons given~~
7 ~~notice as provided in this section shall be bound by all~~
8 ~~orders entered on the petition.~~

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

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

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

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

26 737.404 Powers exercisable by joint trustees;
27 liability.--

28 (1) Any power vested in three or more trustees may be
29 exercised by a majority, but a trustee who has not joined in
30 exercising a power is not liable to the beneficiaries or to
31 others for the consequences of the exercise, and a dissenting

1 trustee is not liable for the consequences of an action ~~act~~ in
2 which the dissenting trustee ~~he or she~~ joins at the direction
3 of the majority of the trustees if the dissent is dissenting
4 ~~trustee~~ expressed ~~his or her dissent~~ in writing to the other
5 ~~any of his or her~~ cotrustees at or before the time of the
6 action joinder.

7 Section 18. Section 737.6035, Florida Statutes, is
8 created to read:

9 737.6035 Antilapse; deceased trust beneficiary; class
10 gifts.--Unless a contrary intention appears in the inter vivos
11 trust:

12 (1) If a beneficiary of an inter vivos trust who is a
13 grandparent, or a lineal descendant of a grandparent, of the
14 grantor:

15 (a) Is dead at the time of the execution of the inter
16 vivos trust or at the termination of a trust interest created
17 by an inter vivos trust;

18 (b) Fails to survive the grantor; or

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

22
23 then the descendants of the trust beneficiary take per stirpes
24 in place of the deceased beneficiary. A person who would have
25 been a trust beneficiary under a class gift if that person had
26 survived the grantor shall be a trust beneficiary for purposes
27 of this section regardless of whether that person died before
28 or after the execution of the inter vivos trust.

29 (2) If a trust beneficiary of an inter vivos trust who
30 is not a grandparent, or a descendant of a grandparent, of the
31 grantor:

1 (a) Is dead at the time of the execution of the inter
2 vivos trust or at the termination of a trust interest created
3 in an inter vivos trust;

4 (b) Fails to survive the grantor; or

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

8
9 then the trust disposition to the trust beneficiary shall
10 lapse unless an intention to substitute another appears in the
11 inter vivos trust.

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

15 Section 19. Section 737.627, Florida Statutes, is
16 amended to read:

17 737.627 Costs and attorney's fees.--

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

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

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

31

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

3 95.031 Computation of time.--Except as provided in
4 subsection (2) and in s. 95.051 and elsewhere in these
5 statutes, the time within which an action shall be begun under
6 any statute of limitations runs from the time the cause of
7 action accrues.

8 (2)(a) An action founded upon ~~for~~ fraud under s.
9 95.11(3), including constructive fraud, must be begun within
10 the period prescribed in this chapter, with the period running
11 from the time the facts giving rise to the cause of action
12 were discovered or should have been discovered with the
13 exercise of due diligence, instead of running from any date
14 prescribed elsewhere in s. 95.11(3), but in any event an
15 action for fraud under s. 95.11(3) must be begun within 12
16 years after the date of the commission of the alleged fraud,
17 regardless of the date the fraud was or should have been
18 discovered.

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

22 Section 22. For the purpose of incorporating the
23 amendment to section 731.201, Florida Statutes, in references
24 thereto, subsection (8) of section 709.08, Florida Statutes,
25 is reenacted to read:

26 709.08 Durable power of attorney.--

27 (8) STANDARD OF CARE.--Except as otherwise provided in
28 paragraph (4)(e), an attorney in fact is a fiduciary who must
29 observe the standards of care applicable to trustees as
30 described in s. 737.302. The attorney in fact is not liable to
31 third parties for any act pursuant to the durable power of

1 attorney if the act was authorized at the time. If the
2 exercise of the power is improper, the attorney in fact is
3 liable to interested persons as described in s. 731.201 for
4 damage or loss resulting from a breach of fiduciary duty by
5 the attorney in fact to the same extent as the trustee of an
6 express trust.

7 Section 23. For the purpose of incorporating the
8 amendment to section 731.201, Florida Statutes, in references
9 thereto, subsection (1) of section 717.1243, Florida Statutes,
10 is reenacted to read:

11 717.1243 Small estate accounts.--

12 (1) A claim for unclaimed property made by a
13 beneficiary, as defined in s. 731.201, of a deceased owner
14 need not be accompanied by an order of a probate court if the
15 claimant files with the department an affidavit, signed by all
16 beneficiaries, stating that all the beneficiaries have
17 amicably agreed among themselves upon a division of the estate
18 and that all funeral expenses, expenses of the last illness,
19 and any other lawful claims have been paid. If the owner died
20 testate, the claim shall be accompanied by a copy of the will.

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

25 660.46 Substitution of fiduciaries.--

26 (3) Unless a waiver or consent shall be filed in the
27 proceedings as provided in subsection (4), the provisions of
28 s. 731.301(1) and (2) shall apply with respect to notice of
29 the proceedings to all persons who are then cofiduciaries with
30 the original fiduciary, other than a person joining as a
31 petitioner in the proceedings; to all persons named in the

1 governing instrument as substitutes or successors to the
2 fiduciary capacity of the original fiduciary; to the persons
3 then living who are entitled under the governing instrument to
4 appoint a substitute or successor to act in the fiduciary
5 capacity of the original fiduciary; to all vested
6 beneficiaries of the fiduciary account; and to all then-living
7 originators of the governing instrument. Unless a waiver or
8 consent shall be filed in the proceedings as provided in
9 subsection (4), the provisions of s. 731.301 shall apply with
10 respect to notice to all contingent beneficiaries of the
11 fiduciary account. Only the persons or classes of persons
12 described in the foregoing provisions of this subsection shall
13 be deemed to be interested persons for the purposes of this
14 section and the proceedings and notices provided for in this
15 section; and the provisions of ss. 731.301(3) and 731.303(3),
16 (4), and (5), relating to notice requirements, the effect of
17 notice, and representation of interests, shall apply to the
18 proceedings provided for in this section.

19 (10) A beneficiary has received a final trust
20 disclosure document or a limitation notice if, when the
21 beneficiary is an adult, it is received by him or her or if,
22 when the beneficiary is a minor or a disabled person, it is
23 received by his or her representative as defined in s.
24 731.303.

25 Section 25. For the purpose of incorporating the
26 amendment to section 731.303, Florida Statutes, in references
27 thereto, section 731.302, Florida Statutes, is reenacted to
28 read:

29 731.302 Waiver and consent by interested
30 person.--Subsequent to the filing of a petition for
31 administration, an interested person, including a guardian ad

1 litem, administrator ad litem, guardian of the property,
2 personal representative, trustee, or other fiduciary, or a
3 sole holder or all coholders of a power of revocation or a
4 power of appointment, may waive, to the extent of that
5 person's interest or the interest which that person
6 represents, subject to the provisions of ss. 731.303 and
7 733.604, any right or notice or the filing of any document,
8 exhibit, or schedule required to be filed and may consent to
9 any action or proceeding which may be required or permitted by
10 this code.

11 Section 26. For the purpose of incorporating the
12 amendment to section 731.303, Florida Statutes, in references
13 thereto, paragraphs (d) and (e) of subsection (4) of section
14 737.303, Florida Statutes, are reenacted to read:

15 737.303 Duty to inform and account to
16 beneficiaries.--The trustee shall keep the beneficiaries of
17 the trust reasonably informed of the trust and its
18 administration. The trustee's duty to inform and account
19 includes, but is not limited to, the following:

20 (4)

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

24 (e) All rights provided a beneficiary under this
25 section may be asserted by a legal representative or natural
26 guardian of the beneficiary. Notice under subsection (1) and a
27 trust accounting under paragraph (a) provided to a
28 representative of the beneficiary as defined in s. 731.303
29 shall bind the beneficiary, and the trustee shall not be
30 required to provide such notice or trust accounting to any
31 beneficiary who would be bound by an order binding on a

1 representative of the beneficiary under s. 731.303, if such
2 notice or trust accounting, respectively, is provided to that
3 representative.

4 Section 27. For the purpose of incorporating the
5 amendment to section 731.303, Florida Statutes, in references
6 thereto, subsection (4) of section 737.307, Florida Statutes,
7 is reenacted to read:

8 737.307 Limitations on proceedings against trustees
9 after beneficiary receives trust disclosure documents.--

10 (4) A beneficiary has received a trust disclosure
11 document or a limitation notice if, being an adult, it is
12 received by the beneficiary or if, being a minor, disabled
13 person, or person who may take by virtue of the exercise or
14 nonexercise of a power of appointment, it is received by the
15 beneficiary's representative as defined in s. 731.303.

16 Section 28. For the purpose of incorporating the
17 amendment to section 732.502, Florida Statutes, in references
18 thereto, paragraph (a) of subsection (2) of section 382.025,
19 Florida Statutes, is reenacted to read:

20 382.025 Certified copies of vital records;
21 confidentiality; research.--

22 (2) OTHER RECORDS.--

23 (a) The department shall authorize the issuance of a
24 certified copy of all or part of any marriage, dissolution of
25 marriage, or death or fetal death certificate, excluding that
26 portion which is confidential and exempt from the provisions
27 of s. 119.07(1) as provided under s. 382.008, to any person
28 requesting it upon receipt of a request and payment of the fee
29 prescribed by this section. A certification of the death or
30 fetal death certificate which includes the confidential
31 portions shall be issued only:

1 1. To the registrant's spouse or parent, or to the
2 registrant's child, grandchild, or sibling, if of legal age,
3 or to any person who provides a will that has been executed
4 pursuant to s. 732.502, insurance policy, or other document
5 that demonstrates his or her interest in the estate of the
6 registrant, or to any person who provides documentation that
7 he or she is acting on behalf of any of them;

8 2. To any agency of the state or local government or
9 the United States for official purposes upon approval of the
10 department; or

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

12 Section 29. For the purpose of incorporating the
13 amendment to section 732.603, Florida Statutes, in references
14 thereto, section 732.604, Florida Statutes, is reenacted to
15 read:

16 732.604 Failure of testamentary provision.--

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

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

25 Section 30. For the purpose of incorporating the
26 amendment to section 732.603, Florida Statutes, in references
27 thereto, paragraph (a) of subsection (3) of section 732.801,
28 Florida Statutes, is reenacted to read:

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

1 (3) DISPOSITION OF DISCLAIMED INTERESTS.--

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

17 Section 31. For the purpose of incorporating the
18 amendment to section 733.2121, Florida Statutes, in references
19 thereto, section 733.701, Florida Statutes, is reenacted to
20 read:

21 733.701 Notifying creditors.--Unless creditors' claims
22 are otherwise barred by s. 733.710, every personal
23 representative shall cause notice to creditors to be published
24 and served under s. 733.2121.

25 Section 32. For the purpose of incorporating the
26 amendment to section 95.031, Florida Statutes, in references
27 thereto, section 63.182, Florida Statutes, is reenacted to
28 read:

29 63.182 Statute of repose.--Notwithstanding s. 95.031
30 or s. 95.11 or any other statute:

31

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

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

12 Section 33. This act shall take effect upon becoming a
13 law.

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