

1 guidelines for delivering or filing a
2 disclaimer; creating s. 739.401, F.S.;
3 providing when a disclaimer is permitted;
4 creating s. 739.402, F.S.; providing when a
5 disclaimer is barred or limited; creating s.
6 739.501, F.S.; prescribing the effect of a
7 tax-qualified disclaimer; creating s. 739.601,
8 F.S.; providing for recording a disclaimer
9 relating to real estate; creating s. 739.701,
10 F.S.; prescribing the application to existing
11 relationships; amending s. 731.201, F.S.;
12 providing applicability of certain definitions
13 to the act; repealing s. 689.21, F.S., relating
14 to disclaimer of interests in property passing
15 under certain nontestamentary instruments or
16 under certain powers of appointment; repealing
17 s. 732.801, F.S., relating to disclaimer of
18 interests in property passing by will or
19 intestate succession or under certain powers of
20 appointment; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Chapter 739, Florida Statutes, consisting
25 of sections 739.101, 739.102, 739.103, 739.104, 739.201,
26 739.202, 739.203, 739.204, 739.205, 739.206, 739.207, 739.301,
27 739.401, 739.402, 739.501, 739.601, and 739.701, Florida
28 Statutes, is created to read:

29 739.101 Short title.--This chapter may be cited as the
30 "Florida Uniform Disclaimer of Property Interests Act."
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1 739.102 Definitions.--As used in this chapter, the
2 term:
3 (1) "Benefactor" means the creator of the interest
4 that is subject to a disclaimer.
5 (2) "Beneficiary designation" means an instrument,
6 other than an instrument creating or amending a trust, naming
7 the beneficiary of:
8 (a) An annuity or insurance policy;
9 (b) An account with a designation for payment on
10 death;
11 (c) A security registered in beneficiary form;
12 (d) A pension, profit-sharing, retirement, or other
13 employment-related benefit plan; or
14 (e) Any other nonprobate transfer at death.
15 (3) "Disclaimant" means the person to whom a
16 disclaimed interest or power would have passed had the
17 disclaimer not been made.
18 (4) "Disclaimed interest" means the interest that
19 would have passed to the disclaimant had the disclaimer not
20 been made.
21 (5) "Disclaimer" means the refusal to accept an
22 interest in or power over property. The term includes a
23 renunciation.
24 (6) "Fiduciary" means a personal representative,
25 trustee, agent acting under a power of attorney, guardian, or
26 other person authorized to act as a fiduciary with respect to
27 the property of another person.
28 (7) "Future interest" means an interest that takes
29 effect in possession or enjoyment, if at all, later than the
30 time of its creation.
31

1 (8) "Insolvent" means that the sum of a person's debts
2 is greater than all of the person's assets at fair valuation.
3 A person is presumed to be "insolvent" if the person is
4 generally not paying his or her debts as they become due.

5 (9) "Jointly held property" means property held in the
6 names of two or more persons under an arrangement in which all
7 holders have concurrent interests and under which the last
8 surviving holder is entitled to the whole of the property.
9 Jointly held property does not include property held as
10 tenants by the entirety.

11 (10) "Person" includes individuals, ascertained and
12 unascertained, living or not living, whether entitled to an
13 interest by right of intestacy or otherwise; a government,
14 governmental subdivision, agency, or instrumentality; and a
15 public corporation.

16 (11) "Time of distribution" means the time when a
17 disclaimed interest would have taken effect in possession or
18 enjoyment.

19 (12) "Trust" means:

20 (a) An express trust (including an honorary trust or a
21 trust under s. 737.116), charitable or noncharitable, with
22 additions thereto, whenever and however created; and

23 (b) A trust created pursuant to a statute, judgment,
24 or decree which requires the trust be administered in the
25 manner of an express trust.

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27 As used in this chapter, the term "trust" does not include a
28 constructive trust or a resulting trust.

29 739.103 Scope.--This chapter applies to disclaimers of
30 any interest in or power over property, whenever created.

31 Except as provided in s. 739.701, this chapter is the

1 exclusive means by which a disclaimer may be made under
2 Florida law.

3 739.104 Power to disclaim; general requirements; when
4 irrevocable.--

5 (1) A person may disclaim, in whole or in part,
6 conditionally or unconditionally, any interest in or power
7 over property, including a power or appointment. A person may
8 disclaim the interest or power even if its creator imposed a
9 spendthrift provision or similar restriction on transfer or a
10 restriction or limitation on the right to disclaim. A
11 disclaimer shall be unconditional unless the disclaimant
12 explicitly provides otherwise in the disclaimer.

13 (2) With court approval, a fiduciary may disclaim, in
14 whole or part, any interest in or power over property,
15 including a power of appointment. Without court approval, a
16 fiduciary may disclaim, in whole or in part, any interest in
17 or power over property, including a power of appointment, if
18 and to the extent that the instrument creating the fiduciary
19 relationship explicitly grants the fiduciary the right to
20 disclaim. In the absence of a court-appointed guardian,
21 notwithstanding anything in chapter 744 to the contrary,
22 without court approval, a natural guardian under s. 744.301
23 may disclaim on behalf of a minor child of the natural
24 guardian, in whole or in part, any interest in or power over
25 property, including a power of appointment, which the minor
26 child is to receive solely as a result of another disclaimer,
27 but only if the disclaimed interest or power does not pass to
28 or for the benefit of the natural guardian as a result of the
29 disclaimer.

30 (3) To be effective, a disclaimer must be in writing,
31 declare the writing as a disclaimer, describe the interest or

1 power disclaimed, and be signed by the person making the
2 disclaimer and witnessed and acknowledged in the manner
3 provided for deeds of real estate to be recorded in this
4 state. In addition, for a disclaimer to be effective, an
5 original of the disclaimer must be delivered or filed in the
6 manner provided in s. 739.301.

7 (4) A partial disclaimer may be expressed as a
8 fraction, percentage, monetary amount, term of years,
9 limitation of a power, or any other interest or estate in the
10 property.

11 (5) A disclaimer becomes irrevocable when any
12 conditions to which the disclaimant has made the disclaimer
13 subject are satisfied and when the disclaimer is delivered or
14 filed pursuant to s. 739.301 or it becomes effective as
15 provided in ss. 739.201-739.207, whichever occurs later.

16 (6) A disclaimer made under this chapter is not a
17 transfer, assignment, or release.

18 739.201 Disclaimer of interest in property.--Except
19 for a disclaimer governed by s. 739.202, s. 739.203, or s.
20 739.204, the following rules apply to a disclaimer of an
21 interest in property:

22 (1) The disclaimer takes effect as of the time the
23 instrument creating the interest becomes irrevocable or, if
24 the interest arose under the law of intestate succession, as
25 of the time of the intestate's death.

26 (2) The disclaimed interest passes according to any
27 provision in the instrument creating the interest providing
28 explicitly for the disposition of the interest, should it be
29 disclaimed, or of disclaimed interests in general.

30 (3) If the instrument does not contain a provision
31 described in subsection (2), the following rules apply:

1 (a) If the disclaimant is an individual, the
2 disclaimed interest passes as if the disclaimant had died
3 immediately before the interest was created, unless under the
4 governing instrument or other applicable law the disclaimed
5 interest is contingent on surviving to the time of
6 distribution, in which case the disclaimed interest passes as
7 if the disclaimant had died immediately before the time for
8 distribution. However, if, by law or under the governing
9 instrument, the descendants of the disclaimant would share in
10 the disclaimed interest by any method of representation had
11 the disclaimant died before the time of distribution, the
12 disclaimed interest passes only to the descendants of the
13 disclaimant who survive the time of distribution. For
14 purposes of this subsection, a disclaimed interest is created
15 at the death of the benefactor or such earlier time, if any,
16 that the benefactor's transfer of the interest is a completed
17 gift for federal gift tax purposes. Also for purposes of this
18 subsection, a disclaimed interest in a trust described in s.
19 733.707(3) shall pass as if the interest had been created
20 under a will.

21 (b) If the disclaimant is not an individual, the
22 disclaimed interest passes as if the disclaimant did not
23 exist.

24 (c) Upon the disclaimer of a preceding interest, a
25 future interest held by a person other than the disclaimant
26 takes effect as if the disclaimant had died or ceased to exist
27 immediately before the time of distribution, but a future
28 interest held by the disclaimant is not accelerated in
29 possession or enjoyment as a result of the disclaimer.

30 739.202 Disclaimer of rights of survivorship in
31 jointly held property.--

1 (1) Upon the death of a holder of jointly held
2 property:

3 (a) If, during the deceased holder's lifetime, the
4 deceased holder could have unilaterally regained a portion of
5 the property attributable to the deceased holder's
6 contributions without the consent of any other holder, another
7 holder may disclaim, in whole or in part, a fractional share
8 of that portion of the property attributable to the deceased
9 holder's contributions determined by dividing the number one
10 by the number of joint holders alive immediately after the
11 death of the holder to whose death the disclaimer relates.

12 (b) For all other jointly held property, another
13 holder may disclaim, in whole or in part, a fraction of the
14 whole of the property the numerator of which is one and the
15 denominator of which is the product of the number of joint
16 holders alive immediately before the death of the holder to
17 whose death the disclaimer relates multiplied by the number of
18 joint holders alive immediately after the death of the holder
19 to whose death the disclaimer relates.

20 (2) A disclaimer under subsection (1) takes effect as
21 of the death of the holder of jointly held property to whose
22 death the disclaimer relates.

23 (3) An interest in jointly held property disclaimed by
24 a surviving holder of the property passes as if the
25 disclaimant predeceased the holder to whose death the
26 disclaimer relates.

27 739.203 Disclaimer of property held as tenancy by the
28 entirety.--

29 (1) The survivorship interest in property held as a
30 tenancy by the entirety to which the survivor succeeds by
31 operation of law upon the death of the co-tenant may be

1 disclaimed as provided in this chapter. For purposes of this
2 chapter only, the deceased tenant's interest in property held
3 as a tenancy by the entirety shall be deemed to be an
4 undivided one-half interest.

5 (2) A disclaimer under subsection (1) takes effect as
6 of the death of the deceased tenant to whose death the
7 disclaimer relates.

8 (3) The survivorship interest in property held as a
9 tenancy by the entirety disclaimed by the surviving tenant
10 passes as if the disclaimant had predeceased the tenant to
11 whose death the disclaimer relates.

12 (4) A disclaimer of an interest in real property held
13 as tenants by the entirety does not cause the disclaimed
14 interest to be homestead property for purposes of descent and
15 distribution under ss. 732.401 and 732.4015.

16 739.204 Disclaimer of interest by trustee.--If a
17 trustee having the power to disclaim under the instrument
18 creating the fiduciary relationship or pursuant to court order
19 disclaims an interest in property that otherwise would have
20 become trust property, the interest does not become trust
21 property.

22 739.205 Disclaimer of power of appointment or other
23 power not held in a fiduciary capacity.--If a holder disclaims
24 a power of appointment or other power not held in a fiduciary
25 capacity, the following rules apply:

26 (1) If the holder has not exercised the power, the
27 disclaimer takes effect as of the time the instrument creating
28 the power becomes irrevocable.

29 (2) If the holder has exercised the power and the
30 disclaimer is of a power other than a presently exercisable
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1 general power of appointment, the disclaimer takes effect
2 immediately after the last exercise of the power.

3 (3) The instrument creating the power is construed as
4 if the power expired when the disclaimer became effective.

5 739.206 Disclaimer by appointee, object, or taker in
6 default of exercise of power of appointment.--

7 (1) A disclaimer of an interest in property by an
8 appointee of a power of appointment takes effect as of the
9 time the instrument by which the holder exercises the power
10 becomes irrevocable.

11 (2) A disclaimer of an interest in property by an
12 object, or taker in default of an exercise of a power of
13 appointment, takes effect as of the time the instrument
14 creating the power becomes irrevocable.

15 739.207 Disclaimer of power held in fiduciary
16 capacity.--

17 (1) If a fiduciary disclaims a power held in a
18 fiduciary capacity which has not been exercised, the
19 disclaimer takes effect as of the time the instrument creating
20 the power becomes irrevocable.

21 (2) If a fiduciary disclaims a power held in a
22 fiduciary capacity which has been exercised, the disclaimer
23 takes effect immediately after the last exercise of the power.

24 (3) A disclaimer under this section is effective as to
25 another fiduciary if the disclaimer so provides and the
26 fiduciary disclaiming has the authority to bind the estate,
27 trust, or other person for whom the fiduciary is acting.

28 739.301 Delivery or filing.--

29 (1) Subject to subsections (2) through (12), delivery
30 of a disclaimer may be effected by personal delivery,
31 first-class mail, or any other method that results in its

1 receipt. A disclaimer sent by first-class mail shall be deemed
2 to have been delivered on the date it is postmarked. Delivery
3 by any other method shall be effective upon receipt by the
4 person to whom the disclaimer is to be delivered under this
5 section.

6 (2) In the case of a disclaimer of an interest created
7 under the law of intestate succession or an interest created
8 by will, other than an interest in a testamentary trust:

9 (a) The disclaimer must be delivered to the personal
10 representative of the decedent's estate; or

11 (b) If no personal representative is serving when the
12 disclaimer is sought to be delivered, the disclaimer must be
13 filed with the clerk of the court in any county where venue of
14 administration would be proper.

15 (3) In the case of a disclaimer of an interest in a
16 testamentary trust:

17 (a) The disclaimer must be delivered to the trustee
18 serving when the disclaimer is delivered or, if no trustee is
19 then serving, to the personal representative of the decedent's
20 estate; or

21 (b) If no personal representative is serving when the
22 disclaimer is sought to be delivered, the disclaimer must be
23 filed with the clerk of the court in any county where venue of
24 administration of the decedent's estate would be proper.

25 (4) In the case of a disclaimer of an interest in an
26 inter vivos trust:

27 (a) The disclaimer must be delivered to the trustee
28 serving when the disclaimer is delivered;

29 (b) If no trustee is then serving, it must be filed
30 with the clerk of the court in any county where the filing of
31 a notice of trust would be proper; or

1 (c) If the disclaimer is made before the time the
2 instrument creating the trust becomes irrevocable, the
3 disclaimer must be delivered to the grantor of the revocable
4 trust or the transferor of the interest or to such person's
5 legal representative.

6 (5) In the case of a disclaimer of an interest created
7 by a beneficiary designation made before the time the
8 designation becomes irrevocable, the disclaimer must be
9 delivered to the person making the beneficiary designation or
10 to such person's legal representative.

11 (6) In the case of a disclaimer of an interest created
12 by a beneficiary designation made after the time the
13 designation becomes irrevocable, the disclaimer must be
14 delivered to the person obligated to distribute the interest.

15 (7) In the case of a disclaimer by a surviving holder
16 of jointly held property, or by the surviving tenant in
17 property held as a tenancy by the entirety, the disclaimer
18 must be delivered to the person to whom the disclaimed
19 interest passes or, if such person cannot reasonably be
20 located by the disclaimant, the disclaimer must be delivered
21 as provided in subsection (2).

22 (8) In the case of a disclaimer by an object, or taker
23 in default of exercise, of a power of appointment at any time
24 after the power was created:

25 (a) The disclaimer must be delivered to the holder of
26 the power or to the fiduciary acting under the instrument that
27 created the power; or

28 (b) If no fiduciary is serving when the disclaimer is
29 sought to be delivered, the disclaimer must be filed with a
30 court having authority to appoint the fiduciary.

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1 (9) In the case of a disclaimer by an appointee of a
2 nonfiduciary power of appointment:

3 (a) The disclaimer must be delivered to the holder,
4 the personal representative of the holder's estate, or the
5 fiduciary under the instrument that created the power; or

6 (b) If no fiduciary is serving when the disclaimer is
7 sought to be delivered, the disclaimer must be filed with a
8 court having authority to appoint the fiduciary.

9 (10) In the case of a disclaimer by a fiduciary of a
10 power over a trust or estate, the disclaimer must be delivered
11 as provided in subsection (2), subsection (3), or subsection
12 (4) as if the power disclaimed were an interest in property.

13 (11) In the case of a disclaimer of a power
14 exercisable by an agent, other than a power exercisable by a
15 fiduciary over a trust or estate, the disclaimer must be
16 delivered to the principal or the principal's representative.

17 (12) Notwithstanding subsection (1), delivery of a
18 disclaimer of an interest in or relating to real estate shall
19 be presumed upon the recording of the disclaimer in the office
20 of the clerk of the court of the county or counties where the
21 real estate is located.

22 (13) A fiduciary or other person having custody of the
23 disclaimed interest is not liable for any otherwise proper
24 distribution or other disposition made without actual notice
25 of the disclaimer or, if the disclaimer is barred under s.
26 739.402, for any otherwise proper distribution or other
27 disposition made in reliance on the disclaimer, if the
28 distribution or disposition is made without actual knowledge
29 of the facts constituting the bar of the right to disclaim.

30 739.401 When disclaimer is permitted.--A disclaimer
31 may be made at any time unless barred under s. 739.402.

1 739.402 When disclaimer is barred or limited.--
2 (1) A disclaimer is barred by a written waiver of the
3 right to disclaim.
4 (2) A disclaimer of an interest in property is barred
5 if any of the following events occur before the disclaimer
6 becomes effective:
7 (a) The disclaimer accepts the interest sought to be
8 disclaimed;
9 (b) The disclaimant voluntarily assigns, conveys,
10 encumbers, pledges, or transfers the interest sought to be
11 disclaimed or contracts to do so;
12 (c) The interest sought to be disclaimed is sold
13 pursuant to a judicial sale; or
14 (d) The disclaimant is insolvent when the disclaimer
15 becomes irrevocable.
16 (3) A disclaimer, in whole or in part, of the future
17 exercise of a power held in a fiduciary capacity is not barred
18 by its previous exercise.
19 (4) A disclaimer, in whole or in part, of the future
20 exercise of a power not held in a fiduciary capacity is not
21 barred by its previous exercise unless the power is
22 exercisable in favor of the disclaimant.
23 (5) A disclaimer of an interest in, or a power over,
24 property which is barred by this section is ineffective.
25 739.501 Tax-qualified disclaimer.--Notwithstanding any
26 other provision of this chapter, if, as a result of a
27 disclaimer or transfer, the disclaimed or transferred interest
28 is treated pursuant to the provisions of s. 2518 of the
29 Internal Revenue Code of 1986 as never having been transferred
30 to the disclaimant, the disclaimer or transfer is effective as
31 a disclaimer under this chapter.

1 739.601 Recording of disclaimer relating to real
2 estate.--

3 (1) A disclaimer of an interest in or relating to real
4 estate does not provide constructive notice to all persons
5 unless the disclaimer contains a legal description of the real
6 estate to which the disclaimer relates and unless the
7 disclaimer is filed for recording in the office of the clerk
8 of the court in the county or counties where the real estate
9 is located.

10 (2) An effective disclaimer meeting the requirements
11 of subsection (1) constitutes constructive notice to all
12 persons from the time of filing. Failure to record the
13 disclaimer does not affect its validity as between the
14 disclaimant and persons to whom the property interest or power
15 passes by reason of the disclaimer.

16 739.701 Application to existing relationships.--Except
17 as otherwise provided in s. 739.402, an interest in or power
18 over property existing on July 1, 2005, as to which the time
19 for delivering or filing a disclaimer under laws superseded by
20 this chapter has not expired, may be disclaimed after July 1,
21 2005.

22 Section 2. Section 731.201, Florida Statutes, is
23 amended to read:

24 731.201 General definitions.--Subject to additional
25 definitions in subsequent chapters that are applicable to
26 specific chapters or parts, and unless the context otherwise
27 requires, in this code, in s. 409.9101, and in chapters 737,
28 738, 739, and 744, the term:

29 (1) "Authenticated," when referring to copies of
30 documents or judicial proceedings required to be filed with
31 the court under this code, means ~~shall mean~~ a certified copy

1 or a copy authenticated according to the Federal Rules of
2 Civil Procedure.

3 (2) "Beneficiary" means heir at law in an intestate
4 estate and devisee in a testate estate. The term "beneficiary"
5 does not apply to an heir at law or a devisee after that
6 person's interest in the estate has been satisfied. In the
7 case of a devise to an existing trust or trustee, or to a
8 trust or trustee described by will, the trustee is a
9 beneficiary of the estate. Except as otherwise provided in
10 this subsection, the beneficiary of the trust is not a
11 beneficiary of the estate of which that trust or the trustee
12 of that trust is a beneficiary. However, if each trustee is
13 also a personal representative of the estate, the beneficiary
14 or beneficiaries of the trust as defined in s. 737.303(4)(b)
15 shall be regarded as a beneficiary of the estate.

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

21 (4) "Claim" means a liability of the decedent, whether
22 arising in contract, tort, or otherwise, and funeral expense.
23 The term does not include an expense of administration or
24 estate, inheritance, succession, or other death taxes.

25 (5) "Clerk" means the clerk or deputy clerk of the
26 court.

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

28 (7) "Curator" means a person appointed by the court to
29 take charge of the estate of a decedent until letters are
30 issued.

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1 (8) "Devise," when used as a noun, means a
2 testamentary disposition of real or personal property and,
3 when used as a verb, means to dispose of real or personal
4 property by will or trust. The term includes "gift," "give,"
5 "bequeath," "bequest," and "legacy." A devise is subject to
6 charges for debts, expenses, and taxes as provided in this
7 code, the will, or the trust.

8 (9) "Devisee" means a person designated in a will or
9 trust to receive a devise. Except as otherwise provided in
10 this subsection, in the case of a devise to an existing trust
11 or trustee, or to a trust or trustee of a trust described by
12 will, the trust or trustee, rather than the beneficiaries of
13 the trust, is the devisee. However, if each trustee is also a
14 personal representative of the estate, the beneficiary or
15 beneficiaries of the trust as defined in s. 737.303(4)(b)
16 shall be regarded as a devisee.

17 (10) "Distributee" means a person who has received
18 estate property from a personal representative or other
19 fiduciary other than as a creditor or purchaser. A
20 testamentary trustee is a distributee only to the extent of
21 distributed assets or increments to them remaining in the
22 trustee's hands. A beneficiary of a testamentary trust to
23 whom the trustee has distributed property received from a
24 personal representative is a distributee. For purposes of this
25 provision, "testamentary trustee" includes a trustee to whom
26 assets are transferred by will, to the extent of the devised
27 assets.

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

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

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

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

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

6 (16) "Formal notice" means formal notice under the
7 Florida Probate Rules.

8 (17) "Grantor" means one who creates or adds to a
9 trust and includes "settlor" or "trustor" and a testator who
10 creates or adds to a trust.

11 (18) "Heirs" or "heirs at law" means those persons,
12 including the surviving spouse, who are entitled under the
13 statutes of intestate succession to the property of a
14 decedent.

15 (19) "Incompetent" means a minor or a person
16 adjudicated incompetent.

17 (20) "Informal notice" or "notice" means informal
18 notice under the Florida Probate Rules.

19 (21) "Interested person" means any person who may
20 reasonably be expected to be affected by the outcome of the
21 particular proceeding involved. In any proceeding affecting
22 the estate or the rights of a beneficiary in the estate, the
23 personal representative of the estate shall be deemed to be an
24 interested person. In any proceeding affecting the expenses of
25 the administration and obligations of a decedent's estate, or
26 any claims described in s. 733.702(1), the trustee of a trust
27 described in s. 733.707(3) is an interested person in the
28 administration of the grantor's estate. The term does not
29 include a beneficiary who has received complete distribution.
30 The meaning, as it relates to particular persons, may vary
31 from time to time and must be determined according to the

1 particular purpose of, and matter involved in, any
2 proceedings.

3 (22) "Letters" means authority granted by the court to
4 the personal representative to act on behalf of the estate of
5 the decedent and refers to what has been known as letters
6 testamentary and letters of administration. All letters shall
7 be designated "letters of administration."

8 (23) "Other state" means any state of the United
9 States other than Florida and includes the District of
10 Columbia, the Commonwealth of Puerto Rico, and any territory
11 or possession subject to the legislative authority of the
12 United States.

13 (24) "Parent" excludes any person who is only a
14 stepparent, foster parent, or grandparent.

15 (25) "Personal representative" means the fiduciary
16 appointed by the court to administer the estate and refers to
17 what has been known as an administrator, administrator cum
18 testamento annexo, administrator de bonis non, ancillary
19 administrator, ancillary executor, or executor.

20 (26) "Petition" means a written request to the court
21 for an order.

22 (27) "Probate of will" means all steps necessary to
23 establish the validity of a will and to admit a will to
24 probate.

25 (28) "Property" means both real and personal property
26 or any interest in it and anything that may be the subject of
27 ownership.

28 (29) "Protected homestead" means the property
29 described in s. 4(a)(1), Art. X of the State Constitution on
30 which at the death of the owner the exemption inures to the
31 owner's surviving spouse or heirs under s. 4(b), Art. X of the

1 State Constitution. For purposes of the code, real property
2 owned as tenants by the entirety is not protected homestead.
3 (30) "Residence" means a person's place of dwelling.
4 (31) "Residuary devise" means a devise of the assets
5 of the estate which remain after the provision for any devise
6 which is to be satisfied by reference to a specific property
7 or type of property, fund, sum, or statutory amount. If the
8 will contains no devise which is to be satisfied by reference
9 to a specific property or type of property, fund, sum, or
10 statutory amount, "residuary devise" or "residue" means a
11 devise of all assets remaining after satisfying the
12 obligations of the estate.
13 (32) "Security" means a security as defined in s.
14 517.021.
15 (33) "Security interest" means a security interest as
16 defined in s. 671.201.
17 (34) "Trust" means an express trust, private or
18 charitable, with additions to it, wherever and however
19 created. It also includes a trust created or determined by a
20 judgment or decree under which the trust is to be administered
21 in the manner of an express trust. "Trust" excludes other
22 constructive trusts, and it excludes resulting trusts;
23 conservatorships; custodial arrangements pursuant to the
24 Florida Uniform Transfers to Minors Act; business trusts
25 providing for certificates to be issued to beneficiaries;
26 common trust funds; land trusts under s. 689.05; trusts
27 created by the form of the account or by the deposit agreement
28 at a financial institution; voting trusts; security
29 arrangements; liquidation trusts; trusts for the primary
30 purpose of paying debts, dividends, interest, salaries, wages,
31 profits, pensions, or employee benefits of any kind; and any

1 arrangement under which a person is nominee or escrowee for
2 another.

3 (35) "Trustee" includes an original, additional,
4 surviving, or successor trustee, whether or not appointed or
5 confirmed by court.

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

11 Section 3. Sections 689.21 and 732.801, Florida
12 Statutes, are repealed.

13 Section 4. This act shall take effect July 1, 2005.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 1368

18 The committee substitute makes the following changes to the
19 underlying bill:

- 20 -- Revises a provision designed to assure that disclaimers
21 of vested future interests in testamentary substitutes,
22 such as revocable trusts, will qualify for federal tax
23 purposes where it is unclear under Florida law that such
24 interests are subject to devise by the possessor; and
25 -- Makes a technical correction.

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