

1 A bill to be entitled
2 An act relating to disclaimer of property
3 interests; creating the Florida Uniform
4 Disclaimer of Property Interests Act; creating
5 s. 739.101, F.S.; providing a short title;
6 creating s. 739.102, F.S.; defining terms;
7 creating s. 739.103, F.S.; providing the scope
8 of the act; creating s. 739.104, F.S.;
9 prescribing general provisions relating to
10 persons' powers to disclaim an interest in or
11 power over property; creating s. 739.201, F.S.;
12 prescribing rules applicable to a disclaimer of
13 an interest in property; creating s. 739.202,
14 F.S.; prescribing rules applicable to a
15 disclaimer of rights of survivorship in jointly
16 held property; creating s. 739.203, F.S.;
17 prescribing rules applicable to a disclaimer of
18 interests in property held as tenancy by the
19 entirety; creating s. 739.204, F.S.;
20 prescribing the effect of a disclaimer of
21 interest by a trustee; creating s. 739.205,
22 F.S.; prescribing rules with respect to a
23 disclaimer of the power of appointment or other
24 power not held in a fiduciary capacity;
25 creating s. 739.206, F.S.; prescribing rules
26 with respect to a disclaimer by the appointee,
27 object, or taker in default of the exercise of
28 power of appointment; creating s. 739.207,
29 F.S.; prescribing rules with respect to the
30 disclaimer of power held in a fiduciary
31 capacity; creating s. 739.301, F.S.; providing

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; amending ss. 121.091 and 710.121,
14 F.S., to conform; repealing s. 689.21, F.S.,
15 relating to disclaimer of interests in property
16 passing under certain nontestamentary
17 instruments or under certain powers of
18 appointment; repealing s. 732.801, F.S.,
19 relating to disclaimer of interests in property
20 passing by will or intestate succession or
21 under certain powers of appointment; providing
22 an effective date.

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

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26 Section 1. Chapter 739, Florida Statutes, consisting
27 of sections 739.101, 739.102, 739.103, 739.104, 739.201,
28 739.202, 739.203, 739.204, 739.205, 739.206, 739.207, 739.301,
29 739.401, 739.402, 739.501, 739.601, and 739.701, Florida
30 Statutes, is created to read:

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

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

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

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

19 (11) "Time of distribution" means the time when a
20 disclaimed interest would have taken effect in possession or
21 enjoyment.

22 (12) "Trust" means:

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

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

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

1 739.103 Scope.--This chapter applies to disclaimers of
2 any interest in or power over property, whenever created.
3 Except as provided in s. 739.701, this chapter is the
4 exclusive means by which a disclaimer may be made under
5 Florida law.

6 739.104 Power to disclaim; general requirements; when
7 irrevocable.--

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

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

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1 or for the benefit of the natural guardian as a result of the
2 disclaimer.

3 (3) To be effective, a disclaimer must be in writing,
4 declare the writing as a disclaimer, describe the interest or
5 power disclaimed, and be signed by the person making the
6 disclaimer and witnessed and acknowledged in the manner
7 provided for deeds of real estate to be recorded in this
8 state. In addition, for a disclaimer to be effective, an
9 original of the disclaimer must be delivered or filed in the
10 manner provided in s. 739.301.

11 (4) A partial disclaimer may be expressed as a
12 fraction, percentage, monetary amount, term of years,
13 limitation of a power, or any other interest or estate in the
14 property.

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

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

22 739.201 Disclaimer of interest in property.--Except
23 for a disclaimer governed by s. 739.202, s. 739.203, or s.
24 739.204, the following rules apply to a disclaimer of an
25 interest in property:

26 (1) The disclaimer takes effect as of the time the
27 instrument creating the interest becomes irrevocable or, if
28 the interest arose under the law of intestate succession, as
29 of the time of the intestate's death.

30 (2) The disclaimed interest passes according to any
31 provision in the instrument creating the interest providing

1 explicitly for the disposition of the interest, should it be
2 disclaimed, or of disclaimed interests in general.

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

5 (a) If the disclaimant is an individual, the
6 disclaimed interest passes as if the disclaimant had died
7 immediately before the interest was created, unless under the
8 governing instrument or other applicable law the disclaimed
9 interest is contingent on surviving to the time of
10 distribution, in which case the disclaimed interest passes as
11 if the disclaimant had died immediately before the time for
12 distribution. However, if, by law or under the governing
13 instrument, the descendants of the disclaimant would share in
14 the disclaimed interest by any method of representation had
15 the disclaimant died before the time of distribution, the
16 disclaimed interest passes only to the descendants of the
17 disclaimant who survive the time of distribution. For
18 purposes of this subsection, a disclaimed interest is created
19 at the death of the benefactor or such earlier time, if any,
20 that the benefactor's transfer of the interest is a completed
21 gift for federal gift tax purposes. Also for purposes of this
22 subsection, a disclaimed interest in a trust described in s.
23 733.707(3) shall pass as if the interest had been created
24 under a will.

25 (b) If the disclaimant is not an individual, the
26 disclaimed interest passes as if the disclaimant did not
27 exist.

28 (c) Upon the disclaimer of a preceding interest, a
29 future interest held by a person other than the disclaimant
30 takes effect as if the disclaimant had died or ceased to exist
31 immediately before the time of distribution, but a future

1 interest held by the disclaimant is not accelerated in
2 possession or enjoyment as a result of the disclaimer.

3 739.202 Disclaimer of rights of survivorship in
4 jointly held property.--

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

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

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

24 (2) A disclaimer under subsection (1) takes effect as
25 of the death of the holder of jointly held property to whose
26 death the disclaimer relates.

27 (3) An interest in jointly held property disclaimed by
28 a surviving holder of the property passes as if the
29 disclaimant predeceased the holder to whose death the
30 disclaimer relates.

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1 739.203 Disclaimer of property held as tenancy by the
2 entirety.--

3 (1) The survivorship interest in property held as a
4 tenancy by the entirety to which the survivor succeeds by
5 operation of law upon the death of the co-tenant may be
6 disclaimed as provided in this chapter. For purposes of this
7 chapter only, the deceased tenant's interest in property held
8 as a tenancy by the entirety shall be deemed to be an
9 undivided one-half interest.

10 (2) A disclaimer under subsection (1) takes effect as
11 of the death of the deceased tenant to whose death the
12 disclaimer relates.

13 (3) The survivorship interest in property held as a
14 tenancy by the entirety disclaimed by the surviving tenant
15 passes as if the disclaimant had predeceased the tenant to
16 whose death the disclaimer relates.

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

21 739.204 Disclaimer of interest by trustee.--If a
22 trustee having the power to disclaim under the instrument
23 creating the fiduciary relationship or pursuant to court order
24 disclaims an interest in property that otherwise would have
25 become trust property, the interest does not become trust
26 property.

27 739.205 Disclaimer of power of appointment or other
28 power not held in a fiduciary capacity.--If a holder disclaims
29 a power of appointment or other power not held in a fiduciary
30 capacity, the following rules apply:

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

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

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

10 739.206 Disclaimer by appointee, object, or taker in
11 default of exercise of power of appointment.--

12 (1) A disclaimer of an interest in property by an
13 appointee of a power of appointment takes effect as of the
14 time the instrument by which the holder exercises the power
15 becomes irrevocable.

16 (2) A disclaimer of an interest in property by an
17 object, or taker in default of an exercise of a power of
18 appointment, takes effect as of the time the instrument
19 creating the power becomes irrevocable.

20 739.207 Disclaimer of power held in fiduciary
21 capacity.--

22 (1) If a fiduciary disclaims a power held in a
23 fiduciary capacity which has not been exercised, the
24 disclaimer takes effect as of the time the instrument creating
25 the power becomes irrevocable.

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

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

3 739.301 Delivery or filing.--

4 (1) Subject to subsections (2) through (12), delivery
5 of a disclaimer may be effected by personal delivery,
6 first-class mail, or any other method that results in its
7 receipt. A disclaimer sent by first-class mail shall be deemed
8 to have been delivered on the date it is postmarked. Delivery
9 by any other method shall be effective upon receipt by the
10 person to whom the disclaimer is to be delivered under this
11 section.

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

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

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

21 (3) In the case of a disclaimer of an interest in a
22 testamentary trust:

23 (a) The disclaimer must be delivered to the trustee
24 serving when the disclaimer is delivered or, if no trustee is
25 then serving, to the personal representative of the decedent's
26 estate; or

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

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

3 (a) The disclaimer must be delivered to the trustee
4 serving when the disclaimer is delivered;

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

8 (c) If the disclaimer is made before the time the
9 instrument creating the trust becomes irrevocable, the
10 disclaimer must be delivered to the grantor of the revocable
11 trust or the transferor of the interest or to such person's
12 legal representative.

13 (5) In the case of a disclaimer of an interest created
14 by a beneficiary designation made before the time the
15 designation becomes irrevocable, the disclaimer must be
16 delivered to the person making the beneficiary designation or
17 to such person's legal representative.

18 (6) In the case of a disclaimer of an interest created
19 by a beneficiary designation made after the time the
20 designation becomes irrevocable, the disclaimer must be
21 delivered to the person obligated to distribute the interest.

22 (7) In the case of a disclaimer by a surviving holder
23 of jointly held property, or by the surviving tenant in
24 property held as a tenancy by the entirety, the disclaimer
25 must be delivered to the person to whom the disclaimed
26 interest passes or, if such person cannot reasonably be
27 located by the disclaimant, the disclaimer must be delivered
28 as provided in subsection (2).

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

1 (a) The disclaimer must be delivered to the holder of
2 the power or to the fiduciary acting under the instrument that
3 created the power; or

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

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

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

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

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

19 (11) In the case of a disclaimer of a power
20 exercisable by an agent, other than a power exercisable by a
21 fiduciary over a trust or estate, the disclaimer must be
22 delivered to the principal or the principal's representative.

23 (12) Notwithstanding subsection (1), delivery of a
24 disclaimer of an interest in or relating to real estate shall
25 be presumed upon the recording of the disclaimer in the office
26 of the clerk of the court of the county or counties where the
27 real estate is located.

28 (13) A fiduciary or other person having custody of the
29 disclaimed interest is not liable for any otherwise proper
30 distribution or other disposition made without actual notice
31 of the disclaimer or, if the disclaimer is barred under s.

1 739.402, for any otherwise proper distribution or other
2 disposition made in reliance on the disclaimer, if the
3 distribution or disposition is made without actual knowledge
4 of the facts constituting the bar of the right to disclaim.

5 739.401 When disclaimer is permitted.--A disclaimer
6 may be made at any time unless barred under s. 739.402.

7 739.402 When disclaimer is barred or limited.--

8 (1) A disclaimer is barred by a written waiver of the
9 right to disclaim.

10 (2) A disclaimer of an interest in property is barred
11 if any of the following events occur before the disclaimer
12 becomes effective:

13 (a) The disclaimer accepts the interest sought to be
14 disclaimed;

15 (b) The disclaimant voluntarily assigns, conveys,
16 encumbers, pledges, or transfers the interest sought to be
17 disclaimed or contracts to do so;

18 (c) The interest sought to be disclaimed is sold
19 pursuant to a judicial sale; or

20 (d) The disclaimant is insolvent when the disclaimer
21 becomes irrevocable.

22 (3) A disclaimer, in whole or in part, of the future
23 exercise of a power held in a fiduciary capacity is not barred
24 by its previous exercise.

25 (4) A disclaimer, in whole or in part, of the future
26 exercise of a power not held in a fiduciary capacity is not
27 barred by its previous exercise unless the power is
28 exercisable in favor of the disclaimant.

29 (5) A disclaimer of an interest in, or a power over,
30 property which is barred by this section is ineffective.

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1 739.501 Tax-qualified disclaimer.--Notwithstanding any
2 other provision of this chapter, if, as a result of a
3 disclaimer or transfer, the disclaimed or transferred interest
4 is treated pursuant to the provisions of s. 2518 of the
5 Internal Revenue Code of 1986 as never having been transferred
6 to the disclaimant, the disclaimer or transfer is effective as
7 a disclaimer under this chapter.

8 739.601 Recording of disclaimer relating to real
9 estate.--

10 (1) A disclaimer of an interest in or relating to real
11 estate does not provide constructive notice to all persons
12 unless the disclaimer contains a legal description of the real
13 estate to which the disclaimer relates and unless the
14 disclaimer is filed for recording in the office of the clerk
15 of the court in the county or counties where the real estate
16 is located.

17 (2) An effective disclaimer meeting the requirements
18 of subsection (1) constitutes constructive notice to all
19 persons from the time of filing. Failure to record the
20 disclaimer does not affect its validity as between the
21 disclaimant and persons to whom the property interest or power
22 passes by reason of the disclaimer.

23 739.701 Application to existing relationships.--Except
24 as otherwise provided in s. 739.402, an interest in or power
25 over property existing on July 1, 2005, as to which the time
26 for delivering or filing a disclaimer under laws superseded by
27 this chapter has not expired, may be disclaimed after July 1,
28 2005.

29 Section 2. Section 731.201, Florida Statutes, is
30 amended to read:

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1 731.201 General definitions.--Subject to additional
2 definitions in subsequent chapters that are applicable to
3 specific chapters or parts, and unless the context otherwise
4 requires, in this code, in s. 409.9101, and in chapters 737,
5 738, 739, and 744, the term:

6 (1) "Authenticated," when referring to copies of
7 documents or judicial proceedings required to be filed with
8 the court under this code, means ~~shall mean~~ a certified copy
9 or a copy authenticated according to the Federal Rules of
10 Civil Procedure.

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

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

29 (4) "Claim" means a liability of the decedent, whether
30 arising in contract, tort, or otherwise, and funeral expense.

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1 The term does not include an expense of administration or
2 estate, inheritance, succession, or other death taxes.

3 (5) "Clerk" means the clerk or deputy clerk of the
4 court.

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

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

9 (8) "Devise," when used as a noun, means a
10 testamentary disposition of real or personal property and,
11 when used as a verb, means to dispose of real or personal
12 property by will or trust. The term includes "gift," "give,"
13 "bequeath," "bequest," and "legacy." A devise is subject to
14 charges for debts, expenses, and taxes as provided in this
15 code, the will, or the trust.

16 (9) "Devisee" means a person designated in a will or
17 trust to receive a devise. Except as otherwise provided in
18 this subsection, in the case of a devise to an existing trust
19 or trustee, or to a trust or trustee of a trust described by
20 will, the trust or trustee, rather than the beneficiaries of
21 the trust, is the devisee. However, if each trustee is also a
22 personal representative of the estate, the beneficiary or
23 beneficiaries of the trust as defined in s. 737.303(4)(b)
24 shall be regarded as a devisee.

25 (10) "Distributee" means a person who has received
26 estate property from a personal representative or other
27 fiduciary other than as a creditor or purchaser. A
28 testamentary trustee is a distributee only to the extent of
29 distributed assets or increments to them remaining in the
30 trustee's hands. A beneficiary of a testamentary trust to
31 whom the trustee has distributed property received from a

1 personal representative is a distributee. For purposes of this
2 provision, "testamentary trustee" includes a trustee to whom
3 assets are transferred by will, to the extent of the devised
4 assets.

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

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

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

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

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

14 (16) "Formal notice" means formal notice under the
15 Florida Probate Rules.

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

19 (18) "Heirs" or "heirs at law" means those persons,
20 including the surviving spouse, who are entitled under the
21 statutes of intestate succession to the property of a
22 decedent.

23 (19) "Incompetent" means a minor or a person
24 adjudicated incompetent.

25 (20) "Informal notice" or "notice" means informal
26 notice under the Florida Probate Rules.

27 (21) "Interested person" means any person who may
28 reasonably be expected to be affected by the outcome of the
29 particular proceeding involved. In any proceeding affecting
30 the estate or the rights of a beneficiary in the estate, the
31 personal representative of the estate shall be deemed to be an

1 interested person. In any proceeding affecting the expenses of
2 the administration and obligations of a decedent's estate, or
3 any claims described in s. 733.702(1), the trustee of a trust
4 described in s. 733.707(3) is an interested person in the
5 administration of the grantor's estate. The term does not
6 include a beneficiary who has received complete distribution.
7 The meaning, as it relates to particular persons, may vary
8 from time to time and must be determined according to the
9 particular purpose of, and matter involved in, any
10 proceedings.

11 (22) "Letters" means authority granted by the court to
12 the personal representative to act on behalf of the estate of
13 the decedent and refers to what has been known as letters
14 testamentary and letters of administration. All letters shall
15 be designated "letters of administration."

16 (23) "Other state" means any state of the United
17 States other than Florida and includes the District of
18 Columbia, the Commonwealth of Puerto Rico, and any territory
19 or possession subject to the legislative authority of the
20 United States.

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

23 (25) "Personal representative" means the fiduciary
24 appointed by the court to administer the estate and refers to
25 what has been known as an administrator, administrator cum
26 testamento annexo, administrator de bonis non, ancillary
27 administrator, ancillary executor, or executor.

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

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1 (27) "Probate of will" means all steps necessary to
2 establish the validity of a will and to admit a will to
3 probate.

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

7 (29) "Protected homestead" means the property
8 described in s. 4(a)(1), Art. X of the State Constitution on
9 which at the death of the owner the exemption inures to the
10 owner's surviving spouse or heirs under s. 4(b), Art. X of the
11 State Constitution. For purposes of the code, real property
12 owned as tenants by the entirety is not protected homestead.

13 (30) "Residence" means a person's place of dwelling.

14 (31) "Residuary devise" means a devise of the assets
15 of the estate which remain after the provision for any devise
16 which is to be satisfied by reference to a specific property
17 or type of property, fund, sum, or statutory amount. If the
18 will contains no devise which is to be satisfied by reference
19 to a specific property or type of property, fund, sum, or
20 statutory amount, "residuary devise" or "residue" means a
21 devise of all assets remaining after satisfying the
22 obligations of the estate.

23 (32) "Security" means a security as defined in s.
24 517.021.

25 (33) "Security interest" means a security interest as
26 defined in s. 671.201.

27 (34) "Trust" means an express trust, private or
28 charitable, with additions to it, wherever and however
29 created. It also includes a trust created or determined by a
30 judgment or decree under which the trust is to be administered
31 in the manner of an express trust. "Trust" excludes other

1 constructive trusts, and it excludes resulting trusts;
2 conservatorships; custodial arrangements pursuant to the
3 Florida Uniform Transfers to Minors Act; business trusts
4 providing for certificates to be issued to beneficiaries;
5 common trust funds; land trusts under s. 689.05; trusts
6 created by the form of the account or by the deposit agreement
7 at a financial institution; voting trusts; security
8 arrangements; liquidation trusts; trusts for the primary
9 purpose of paying debts, dividends, interest, salaries, wages,
10 profits, pensions, or employee benefits of any kind; and any
11 arrangement under which a person is nominee or escrowee for
12 another.

13 (35) "Trustee" includes an original, additional,
14 surviving, or successor trustee, whether or not appointed or
15 confirmed by court.

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

21 Section 3. Paragraph (b) of subsection (8) of section
22 121.091, Florida Statutes, is amended to read:

23 121.091 Benefits payable under the system.--Benefits
24 may not be paid under this section unless the member has
25 terminated employment as provided in s. 121.021(39)(a) or
26 begun participation in the Deferred Retirement Option Program
27 as provided in subsection (13), and a proper application has
28 been filed in the manner prescribed by the department. The
29 department may cancel an application for retirement benefits
30 when the member or beneficiary fails to timely provide the
31 information and documents required by this chapter and the

1 department's rules. The department shall adopt rules
2 establishing procedures for application for retirement
3 benefits and for the cancellation of such application when the
4 required information or documents are not received.

5 (8) DESIGNATION OF BENEFICIARIES.--

6 (b) A designated beneficiary of a retirement account
7 for whom there is a monetary interest may disclaim his or her
8 monetary interest as provided in chapter 739 s. 689.21, and in
9 accordance with division rules governing such disclaimers.
10 Such disclaimer must be filed within 24 months after the event
11 that created the interest, that is, the death of the member or
12 annuitant.

13 Section 4. Subsection (1) of section 710.121, Florida
14 Statutes, is amended to read:

15 710.121 Renunciation, resignation, death, or removal
16 of custodian; designation of successor custodian.--

17 (1) A person nominated under s. 710.104 or designated
18 under s. 710.111 as custodian may decline to serve by
19 delivering a valid disclaimer under chapter 739 s. 689.21 to
20 the person who made the nomination or to the transferor or the
21 transferor's legal representative. If the event giving rise
22 to a transfer has not occurred and no substitute custodian
23 able, willing, and eligible to serve was nominated under s.
24 710.104, the person who made the nomination may nominate a
25 substitute custodian under s. 710.104; otherwise, the
26 transferor or the transferor's legal representative shall
27 designate a substitute custodian at the time of the transfer,
28 in either case from among the persons eligible to serve as
29 custodian for that kind of property under s. 710.111(1). The
30 custodian so designated has the rights of a successor
31 custodian.

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Section 5. Sections 689.21 and 732.801, Florida Statutes, are repealed.

Section 6. This act shall take effect July 1, 2005.