

1 A bill to be entitled
2 An act relating to disclaimers of property interests;
3 creating the Florida Uniform Disclaimer of Property
4 Interests Act; creating s. 739.101, F.S.; providing a
5 short title; creating s. 739.102, F.S.; defining terms;
6 creating s. 739.103, F.S.; providing the scope of the act;
7 creating s. 739.104, F.S.; prescribing general provisions
8 relating to persons' powers to disclaim an interest in or
9 power over property; creating s. 739.201, F.S.;
10 prescribing rules applicable to a disclaimer of an
11 interest in property; creating s. 739.202, F.S.;
12 prescribing rules applicable to a disclaimer of rights of
13 survivorship in jointly held property; creating s.
14 739.203, F.S.; prescribing rules applicable to a
15 disclaimer of interests in property held as tenancy by the
16 entirety; creating s. 739.204, F.S.; prescribing the
17 effect of a disclaimer of interest by a trustee; creating
18 s. 739.205, F.S.; prescribing rules with respect to a
19 disclaimer of the power of appointment or other power not
20 held in a fiduciary capacity; creating s. 739.206, F.S.;
21 prescribing rules with respect to a disclaimer by the
22 appointee, object, or taker in default of the exercise of
23 power of appointment; creating s. 739.207, F.S.;
24 prescribing rules with respect to the disclaimer of power
25 held in a fiduciary capacity; creating s. 739.301, F.S.;
26 providing guidelines for delivering or filing a
27 disclaimer; creating s. 739.401, F.S.; providing when a
28 disclaimer is permitted; creating s. 739.402, F.S.;

29 providing when a disclaimer is barred or limited; creating
 30 s. 739.501, F.S.; prescribing the effect of a tax-
 31 qualified disclaimer; creating s. 739.601, F.S.; providing
 32 for recording a disclaimer relating to real estate;
 33 creating s. 739.701, F.S.; prescribing the application to
 34 existing relationships; amending s. 731.201, F.S.;
 35 providing applicability of certain definitions to the act;
 36 amending ss. 121.091 and 710.121, F.S., to conform;
 37 repealing s. 689.21, F.S., relating to disclaimer of
 38 interests in property passing under certain
 39 nontestamentary instruments or under certain powers of
 40 appointment; repealing s. 732.801, F.S., relating to
 41 disclaimer of interests in property passing by will or
 42 intestate succession or under certain powers of
 43 appointment; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Chapter 739, Florida Statutes, consisting of
 48 sections 739.101, 739.102, 739.103, 739.104, 739.201, 739.202,
 49 739.203, 739.204, 739.205, 739.206, 739.207, 739.301, 739.401,
 50 739.402, 739.501, 739.601, and 739.701, Florida Statutes, is
 51 created to read:

52 739.101 Short title.--This chapter may be cited as the
 53 "Florida Uniform Disclaimer of Property Interests Act."

54 739.102 Definitions.--As used in this chapter, the term:

55 (1) "Benefactor" means the creator of the interest that is
 56 subject to a disclaimer.

57 (2) "Beneficiary designation" means an instrument, other
 58 than an instrument creating or amending a trust, naming the
 59 beneficiary of:

60 (a) An annuity or insurance policy;

61 (b) An account with a designation for payment on death;

62 (c) A security registered in beneficiary form;

63 (d) A pension, profit-sharing, retirement, or other
 64 employment-related benefit plan; or

65 (e) Any other nonprobate transfer at death.

66 (3) "Disclaimant" means the person to whom a disclaimed
 67 interest or power would have passed had the disclaimer not been
 68 made.

69 (4) "Disclaimed interest" means the interest that would
 70 have passed to the disclaimant had the disclaimer not been made.

71 (5) "Disclaimer" means the refusal to accept an interest
 72 in or power over property. The term includes a renunciation.

73 (6) "Fiduciary" means a personal representative, trustee,
 74 agent acting under a power of attorney, guardian, or other
 75 person authorized to act as a fiduciary with respect to the
 76 property of another person.

77 (7) "Future interest" means an interest that takes effect
 78 in possession or enjoyment, if at all, later than the time of
 79 its creation.

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

84 (9) "Jointly held property" means property held in the

85 names of two or more persons under an arrangement in which all
 86 holders have concurrent interests and under which the last
 87 surviving holder is entitled to the whole of the property.
 88 Jointly held property does not include property held as tenants
 89 by the entirety.

90 (10) "Person" includes individuals, ascertained and
 91 unascertained, living or not living, whether entitled to an
 92 interest by right of intestacy or otherwise; a government,
 93 governmental subdivision, agency, or instrumentality; and a
 94 public corporation.

95 (11) "Time of distribution" means the time when a
 96 disclaimed interest would have taken effect in possession or
 97 enjoyment.

98 (12) "Trust" means:

99 (a) An express trust, including an honorary trust or a
 100 trust under s. 737.116, charitable or noncharitable, with
 101 additions thereto, whenever and however created.

102 (b) A trust created pursuant to a law, judgment, or decree
 103 which requires the trust be administered in the manner of an
 104 express trust.

105
 106 As used in this chapter, the term "trust" does not include a
 107 constructive trust or a resulting trust.

108 739.103 Scope.--This chapter applies to disclaimers of any
 109 interest in or power over property, whenever created. Except as
 110 provided in s. 739.701, this chapter is the exclusive means by
 111 which a disclaimer may be made under the laws of this state.

112 739.104 Power to disclaim; general requirements; when

113 irrevocable.--

114 (1) A person may disclaim, in whole or in part,
 115 conditionally or unconditionally, any interest in or power over
 116 property, including a power of appointment. A person may
 117 disclaim the interest or power even if its creator imposed a
 118 spendthrift provision or similar restriction on transfer or a
 119 restriction or limitation on the right to disclaim. A disclaimer
 120 shall be unconditional unless the disclaimant explicitly
 121 provides otherwise in the disclaimer.

122 (2) With court approval, a fiduciary may disclaim, in
 123 whole or part, any interest in or power over property, including
 124 a power of appointment. Without court approval, a fiduciary may
 125 disclaim, in whole or in part, any interest in or power over
 126 property, including a power of appointment, if and to the extent
 127 that the instrument creating the fiduciary relationship
 128 explicitly grants the fiduciary the right to disclaim. In the
 129 absence of a court-appointed guardian, notwithstanding anything
 130 in chapter 744 to the contrary, without court approval, a
 131 natural guardian under s. 744.301 may disclaim on behalf of a
 132 minor child of the natural guardian, in whole or in part, any
 133 interest in or power over property, including a power of
 134 appointment, which the minor child is to receive solely as a
 135 result of another disclaimer, but only if the disclaimed
 136 interest or power does not pass to or for the benefit of the
 137 natural guardian as a result of the disclaimer.

138 (3) To be effective, a disclaimer must be in writing,
 139 declare the writing as a disclaimer, describe the interest or
 140 power disclaimed, and be signed by the person making the

141 disclaimer and witnessed and acknowledged in the manner provided
 142 for deeds of real estate to be recorded in this state. In
 143 addition, for a disclaimer to be effective, an original of the
 144 disclaimer must be delivered or filed in the manner provided in
 145 s. 739.301.

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

149 (5) A disclaimer becomes irrevocable when any conditions
 150 to which the disclaimant has made the disclaimer subject are
 151 satisfied and when the disclaimer is delivered or filed pursuant
 152 to s. 739.301 or it becomes effective as provided in ss.
 153 739.201-739.207, whichever occurs later.

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

156 739.201 Disclaimer of interest in property.--Except for a
 157 disclaimer governed by s. 739.202, s. 739.203, or s. 739.204,
 158 the following rules apply to a disclaimer of an interest in
 159 property:

160 (1) The disclaimer takes effect as of the time the
 161 instrument creating the interest becomes irrevocable or, if the
 162 interest arose under the law of intestate succession, as of the
 163 time of the intestate's death.

164 (2) The disclaimed interest passes according to any
 165 provision in the instrument creating the interest providing
 166 explicitly for the disposition of the interest, should it be
 167 disclaimed, or of disclaimed interests in general.

168 (3) If the instrument does not contain a provision

169 described in subsection (2), the following rules apply:

170 (a) If the disclaimant is an individual, the disclaimed
 171 interest passes as if the disclaimant has predeceased the
 172 benefactor, unless the disclaimed interest is a remainder
 173 contingent on surviving to the time of distribution, in which
 174 case the disclaimed interest passes as if the disclaimant had
 175 died immediately before the time for distribution. However, if,
 176 by law or under the instrument, the descendants of the
 177 disclaimant would share in the disclaimed interest by any method
 178 of representation had the disclaimant died before the time of
 179 distribution, the disclaimed interest passes only to the
 180 descendants of the disclaimant surviving at the time of
 181 distribution.

182 (b) If the disclaimant is not an individual, the
 183 disclaimed interest passes as if the disclaimant did not exist.

184 (c) Upon the disclaimer of a preceding interest, a future
 185 interest held by a person other than the disclaimant takes
 186 effect as if the disclaimant had died or ceased to exist
 187 immediately before the time of distribution, but a future
 188 interest held by the disclaimant is not accelerated in
 189 possession or enjoyment as a result of the disclaimer.

190 739.202 Disclaimer of rights of survivorship in jointly
 191 held property.--

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

193 (a) If, during the deceased holder's lifetime, the
 194 deceased holder could have unilaterally regained a portion of
 195 the property attributable to the deceased holder's contributions
 196 without the consent of any other holder, another holder may

197 disclaim, in whole or in part, a fractional share of that
198 portion of the property attributable to the deceased holder's
199 contributions determined by dividing the number one by the
200 number of joint holders alive immediately after the death of the
201 holder to whose death the disclaimer relates.

202 (b) For all other jointly held property, another holder
203 may disclaim, in whole or in part, a fraction of the whole of
204 the property the numerator of which is one and the denominator
205 of which is the product of the number of joint holders alive
206 immediately before the death of the holder to whose death the
207 disclaimer relates multiplied by the number of joint holders
208 alive immediately after the death of the holder to whose death
209 the disclaimer relates.

210 (2) A disclaimer under subsection (1) takes effect as of
211 the death of the holder of jointly held property to whose death
212 the disclaimer relates.

213 (3) An interest in jointly held property disclaimed by a
214 surviving holder of the property passes as if the disclaimant
215 predeceased the holder to whose death the disclaimer relates.

216 739.203 Disclaimer of property held as tenancy by the
217 entirety.--

218 (1) The survivorship interest in property held as a
219 tenancy by the entirety to which the survivor succeeds by
220 operation of law upon the death of the co-tenant may be
221 disclaimed as provided in this chapter. For purposes of this
222 chapter only, the deceased tenant's interest in property held as
223 a tenancy by the entirety shall be deemed to be an undivided
224 one-half interest.

225 (2) A disclaimer under subsection (1) takes effect as of
226 the death of the deceased tenant to whose death the disclaimer
227 relates.

228 (3) The survivorship interest in property held as a
229 tenancy by the entirety disclaimed by the surviving tenant
230 passes as if the disclaimant had predeceased the tenant to whose
231 death the disclaimer relates.

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

236 739.204 Disclaimer of interest by trustee.--If a trustee
237 having the power to disclaim under the instrument creating the
238 fiduciary relationship or pursuant to court order disclaims an
239 interest in property that otherwise would have become trust
240 property, the interest does not become trust property.

241 739.205 Disclaimer of power of appointment or other power
242 not held in a fiduciary capacity.--If a holder disclaims a power
243 of appointment or other power not held in a fiduciary capacity,
244 the following rules apply:

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

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

252 (3) The instrument creating the power is construed as if

253 the power expired when the disclaimer became effective.

254 739.206 Disclaimer by appointee, object, or taker in
 255 default of exercise of power of appointment.--

256 (1) A disclaimer of an interest in property by an
 257 appointee of a power of appointment takes effect as of the time
 258 the instrument by which the holder exercises the power becomes
 259 irrevocable.

260 (2) A disclaimer of an interest in property by an object,
 261 or taker in default of an exercise of a power of appointment,
 262 takes effect as of the time the instrument creating the power
 263 becomes irrevocable.

264 739.207 Disclaimer of power held in fiduciary capacity.--

265 (1) If a fiduciary disclaims a power held in a fiduciary
 266 capacity which has not been exercised, the disclaimer takes
 267 effect as of the time the instrument creating the power becomes
 268 irrevocable.

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

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

276 739.301 Delivery or filing.--

277 (1) Subject to subsections (2) through (12), delivery of a
 278 disclaimer may be effected by personal delivery, first-class
 279 mail, or any other method that results in its receipt. A
 280 disclaimer sent by first-class mail shall be deemed to have been

281 delivered on the date it is postmarked. Delivery by any other
 282 method shall be effective upon receipt by the person to whom the
 283 disclaimer is to be delivered under this section.

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

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

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

293 (3) In the case of a disclaimer of an interest in a
 294 testamentary trust:

295 (a) The disclaimer must be delivered to the trustee
 296 serving when the disclaimer is delivered or, if no trustee is
 297 then serving, to the personal representative of the decedent's
 298 estate; or

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

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

305 (a) The disclaimer must be delivered to the trustee
 306 serving when the disclaimer is delivered;

307 (b) If no trustee is then serving, it must be filed with
 308 the clerk of the court in any county where the filing of a

309 notice of trust would be proper; or

310 (c) If the disclaimer is made before the time the
 311 instrument creating the trust becomes irrevocable, the
 312 disclaimer must be delivered to the grantor of the revocable
 313 trust or the transferor of the interest or to such person's
 314 legal representative.

315 (5) In the case of a disclaimer of an interest created by
 316 a beneficiary designation made before the time the designation
 317 becomes irrevocable, the disclaimer must be delivered to the
 318 person making the beneficiary designation or to such person's
 319 legal representative.

320 (6) In the case of a disclaimer of an interest created by
 321 a beneficiary designation made after the time the designation
 322 becomes irrevocable, the disclaimer must be delivered to the
 323 person obligated to distribute the interest.

324 (7) In the case of a disclaimer by a surviving holder of
 325 jointly held property, or by the surviving tenant in property
 326 held as a tenancy by the entirety, the disclaimer must be
 327 delivered to the person to whom the disclaimed interest passes
 328 or, if such person cannot reasonably be located by the
 329 disclaimant, the disclaimer must be delivered as provided in
 330 subsection (2).

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

334 (a) The disclaimer must be delivered to the holder of the
 335 power or to the fiduciary acting under the instrument that
 336 created the power; or

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

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

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

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

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

352 (11) In the case of a disclaimer of a power exercisable by
353 an agent, other than a power exercisable by a fiduciary over a
354 trust or estate, the disclaimer must be delivered to the
355 principal or the principal's representative.

356 (12) Notwithstanding subsection (1), delivery of a
357 disclaimer of an interest in or relating to real estate shall be
358 presumed upon the recording of the disclaimer in the office of
359 the clerk of the court of the county or counties where the real
360 estate is located.

361 (13) A fiduciary or other person having custody of the
362 disclaimed interest is not liable for any otherwise proper
363 distribution or other disposition made without actual notice of
364 the disclaimer or, if the disclaimer is barred under s. 739.402,

365 for any otherwise proper distribution or other disposition made
 366 in reliance on the disclaimer, if the distribution or
 367 disposition is made without actual knowledge of the facts
 368 constituting the bar of the right to disclaim.

369 739.401 When disclaimer is permitted.--A disclaimer may be
 370 made at any time unless barred under s. 739.402.

371 739.402 When disclaimer is barred or limited.--

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

374 (2) A disclaimer of an interest in property is barred if
 375 any of the following events occurs before the disclaimer becomes
 376 effective:

377 (a) The disclaimer accepts the interest sought to be
 378 disclaimed;

379 (b) The disclaimant voluntarily assigns, conveys,
 380 encumbers, pledges, or transfers the interest sought to be
 381 disclaimed or contracts to do so;

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

384 (d) The disclaimant is insolvent when the disclaimer
 385 becomes irrevocable.

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

389 (4) A disclaimer, in whole or in part, of the future
 390 exercise of a power not held in a fiduciary capacity is not
 391 barred by its previous exercise unless the power is exercisable
 392 in favor of the disclaimant.

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

395 739.501 Tax-qualified disclaimer.--Notwithstanding any
 396 other provision of this chapter, if, as a result of a disclaimer
 397 or transfer, the disclaimed or transferred interest is treated
 398 pursuant to the provisions of s. 2518 of the Internal Revenue
 399 Code of 1986 as never having been transferred to the
 400 disclaimant, the disclaimer or transfer is effective as a
 401 disclaimer under this chapter.

402 739.601 Recording of disclaimer relating to real estate.--

403 (1) A disclaimer of an interest in or relating to real
 404 estate does not provide constructive notice to all persons
 405 unless the disclaimer contains a legal description of the real
 406 estate to which the disclaimer relates and unless the disclaimer
 407 is filed for recording in the office of the clerk of the court
 408 in the county or counties where the real estate is located.

409 (2) An effective disclaimer meeting the requirements of
 410 subsection (1) constitutes constructive notice to all persons
 411 from the time of filing. Failure to record the disclaimer does
 412 not affect its validity as between the disclaimant and persons
 413 to whom the property interest or power passes by reason of the
 414 disclaimer.

415 739.701 Application to existing relationships.--Except as
 416 otherwise provided in s. 739.402, an interest in or power over
 417 property existing on July 1, 2005, as to which the time for
 418 delivering or filing a disclaimer under laws superseded by this
 419 chapter has not expired, may be disclaimed after July 1, 2005.

420 Section 2. Section 731.201, Florida Statutes, is amended

421 to read:

422 731.201 General definitions.--Subject to additional
 423 definitions in subsequent chapters that are applicable to
 424 specific chapters or parts, and unless the context otherwise
 425 requires, in this code, in s. 409.9101, and in chapters 737,
 426 738, 739, and 744, the term:

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

431 (2) "Beneficiary" means heir at law in an intestate estate
 432 and devisee in a testate estate. The term "beneficiary" does not
 433 apply to an heir at law or a devisee after that person's
 434 interest in the estate has been satisfied. In the case of a
 435 devise to an existing trust or trustee, or to a trust or trustee
 436 described by will, the trustee is a beneficiary of the estate.
 437 Except as otherwise provided in this subsection, the beneficiary
 438 of the trust is not a beneficiary of the estate of which that
 439 trust or the trustee of that trust is a beneficiary. However, if
 440 each trustee is also a personal representative of the estate,
 441 the beneficiary or beneficiaries of the trust as defined in s.
 442 737.303(4)(b) shall be regarded as a beneficiary of the estate.

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

448 (4) "Claim" means a liability of the decedent, whether

449 arising in contract, tort, or otherwise, and funeral expense.
 450 The term does not include an expense of administration or
 451 estate, inheritance, succession, or other death taxes.

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

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

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

457 (8) "Devise," when used as a noun, means a testamentary
 458 disposition of real or personal property and, when used as a
 459 verb, means to dispose of real or personal property by will or
 460 trust. The term includes "gift," "give," "bequeath," "bequest,"
 461 and "legacy." A devise is subject to charges for debts,
 462 expenses, and taxes as provided in this code, the will, or the
 463 trust.

464 (9) "Devisee" means a person designated in a will or trust
 465 to receive a devise. Except as otherwise provided in this
 466 subsection, in the case of a devise to an existing trust or
 467 trustee, or to a trust or trustee of a trust described by will,
 468 the trust or trustee, rather than the beneficiaries of the
 469 trust, is the devisee. However, if each trustee is also a
 470 personal representative of the estate, the beneficiary or
 471 beneficiaries of the trust as defined in s. 737.303(4)(b) shall
 472 be regarded as a devisee.

473 (10) "Distributee" means a person who has received estate
 474 property from a personal representative or other fiduciary other
 475 than as a creditor or purchaser. A testamentary trustee is a
 476 distributee only to the extent of distributed assets or

477 increments to them remaining in the trustee's hands. A
 478 beneficiary of a testamentary trust to whom the trustee has
 479 distributed property received from a personal representative is
 480 a distributee. For purposes of this provision, "testamentary
 481 trustee" includes a trustee to whom assets are transferred by
 482 will, to the extent of the devised assets.

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

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

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

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

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

492 (16) "Formal notice" means formal notice under the Florida
 493 Probate Rules.

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

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

500 (19) "Incompetent" means a minor or a person adjudicated
 501 incompetent.

502 (20) "Informal notice" or "notice" means informal notice
 503 under the Florida Probate Rules.

504 (21) "Interested person" means any person who may

505 reasonably be expected to be affected by the outcome of the
 506 particular proceeding involved. In any proceeding affecting the
 507 estate or the rights of a beneficiary in the estate, the
 508 personal representative of the estate shall be deemed to be an
 509 interested person. In any proceeding affecting the expenses of
 510 the administration and obligations of a decedent's estate, or
 511 any claims described in s. 733.702(1), the trustee of a trust
 512 described in s. 733.707(3) is an interested person in the
 513 administration of the grantor's estate. The term does not
 514 include a beneficiary who has received complete distribution.
 515 The meaning, as it relates to particular persons, may vary from
 516 time to time and must be determined according to the particular
 517 purpose of, and matter involved in, any proceedings.

518 (22) "Letters" means authority granted by the court to the
 519 personal representative to act on behalf of the estate of the
 520 decedent and refers to what has been known as letters
 521 testamentary and letters of administration. All letters shall be
 522 designated "letters of administration."

523 (23) "Other state" means any state of the United States
 524 other than Florida and includes the District of Columbia, the
 525 Commonwealth of Puerto Rico, and any territory or possession
 526 subject to the legislative authority of the United States.

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

529 (25) "Personal representative" means the fiduciary
 530 appointed by the court to administer the estate and refers to
 531 what has been known as an administrator, administrator cum
 532 testamento annexo, administrator de bonis non, ancillary

533 administrator, ancillary executor, or executor.

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

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

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

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

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

548 (31) "Residuary devise" means a devise of the assets of
549 the estate which remain after the provision for any devise which
550 is to be satisfied by reference to a specific property or type
551 of property, fund, sum, or statutory amount. If the will
552 contains no devise which is to be satisfied by reference to a
553 specific property or type of property, fund, sum, or statutory
554 amount, "residuary devise" or "residue" means a devise of all
555 assets remaining after satisfying the obligations of the estate.

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

557 (33) "Security interest" means a security interest as
558 defined in s. 671.201.

559 (34) "Trust" means an express trust, private or
560 charitable, with additions to it, wherever and however created.

561 It also includes a trust created or determined by a judgment or
562 decree under which the trust is to be administered in the manner
563 of an express trust. "Trust" excludes other constructive trusts,
564 and it excludes resulting trusts; conservatorships; custodial
565 arrangements pursuant to the Florida Uniform Transfers to Minors
566 Act; business trusts providing for certificates to be issued to
567 beneficiaries; common trust funds; land trusts under s. 689.05;
568 trusts created by the form of the account or by the deposit
569 agreement at a financial institution; voting trusts; security
570 arrangements; liquidation trusts; trusts for the primary purpose
571 of paying debts, dividends, interest, salaries, wages, profits,
572 pensions, or employee benefits of any kind; and any arrangement
573 under which a person is nominee or escrowee for another.

574 (35) "Trustee" includes an original, additional,
575 surviving, or successor trustee, whether or not appointed or
576 confirmed by court.

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

582 Section 3. Paragraph (b) of subsection (8) of section
583 121.091, Florida Statutes, is amended to read:

584 121.091 Benefits payable under the system.--Benefits may
585 not be paid under this section unless the member has terminated
586 employment as provided in s. 121.021(39)(a) or begun
587 participation in the Deferred Retirement Option Program as
588 provided in subsection (13), and a proper application has been

589 | filed in the manner prescribed by the department. The department
 590 | may cancel an application for retirement benefits when the
 591 | member or beneficiary fails to timely provide the information
 592 | and documents required by this chapter and the department's
 593 | rules. The department shall adopt rules establishing procedures
 594 | for application for retirement benefits and for the cancellation
 595 | of such application when the required information or documents
 596 | are not received.

597 | (8) DESIGNATION OF BENEFICIARIES.--

598 | (b) A designated beneficiary of a retirement account for
 599 | whom there is a monetary interest may disclaim his or her
 600 | monetary interest as provided in chapter 739 s. 689.21, and in
 601 | accordance with division rules governing such disclaimers. Such
 602 | disclaimer must be filed within 24 months after the event that
 603 | created the interest, that is, the death of the member or
 604 | annuitant.

605 | Section 4. Subsection (1) of section 710.121, Florida
 606 | Statutes, is amended to read:

607 | 710.121 Renunciation, resignation, death, or removal of
 608 | custodian; designation of successor custodian.--

609 | (1) A person nominated under s. 710.104 or designated
 610 | under s. 710.111 as custodian may decline to serve by delivering
 611 | a valid disclaimer under chapter 739 s. 689.21 to the person who
 612 | made the nomination or to the transferor or the transferor's
 613 | legal representative. If the event giving rise to a transfer has
 614 | not occurred and no substitute custodian able, willing, and
 615 | eligible to serve was nominated under s. 710.104, the person who
 616 | made the nomination may nominate a substitute custodian under s.

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617 710.104; otherwise, the transferor or the transferor's legal
618 representative shall designate a substitute custodian at the
619 time of the transfer, in either case from among the persons
620 eligible to serve as custodian for that kind of property under
621 s. 710.111(1). The custodian so designated has the rights of a
622 successor custodian.

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

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