

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to disclaimers of property interests;  
7 creating the Florida Uniform Disclaimer of Property  
8 Interests Act; creating s. 739.101, F.S.; providing a  
9 short title; creating s. 739.102, F.S.; defining terms;  
10 creating s. 739.103, F.S.; providing the scope of the act;  
11 creating s. 739.104, F.S.; prescribing general provisions  
12 relating to persons' powers to disclaim an interest in or  
13 power over property; creating s. 739.201, F.S.;  
14 prescribing rules applicable to a disclaimer of an  
15 interest in property; creating s. 739.202, F.S.;  
16 prescribing rules applicable to a disclaimer of rights of  
17 survivorship in jointly held property; creating s.  
18 739.203, F.S.; prescribing rules applicable to a  
19 disclaimer of interests in property held as tenancy by the  
20 entirety; creating s. 739.204, F.S.; prescribing the  
21 effect of a disclaimer of interest by a trustee; creating  
22 s. 739.205, F.S.; prescribing rules with respect to a  
23 disclaimer of the power of appointment or other power not

24 held in a fiduciary capacity; creating s. 739.206, F.S.;

25 prescribing rules with respect to a disclaimer by the

26 appointee, object, or taker in default of the exercise of

27 power of appointment; creating s. 739.207, F.S.;

28 prescribing rules with respect to the disclaimer of power

29 held in a fiduciary capacity; creating s. 739.301, F.S.;

30 providing guidelines for delivering or filing a

31 disclaimer; creating s. 739.401, F.S.; providing when a

32 disclaimer is permitted; creating s. 739.402, F.S.;

33 providing when a disclaimer is barred or limited; creating

34 s. 739.501, F.S.; prescribing the effect of a tax-

35 qualified disclaimer; creating s. 739.601, F.S.; providing

36 for recording a disclaimer relating to real estate;

37 creating s. 739.701, F.S.; prescribing the application to

38 existing relationships; amending s. 731.201, F.S.;

39 providing applicability of certain definitions to the act;

40 amending ss. 121.091 and 710.121, F.S., to conform;

41 repealing s. 689.21, F.S., relating to disclaimer of

42 interests in property passing under certain

43 nontestamentary instruments or under certain powers of

44 appointment; repealing s. 732.801, F.S., relating to

45 disclaimer of interests in property passing by will or

46 intestate succession or under certain powers of

47 appointment; providing an effective date.

48

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

50

51 Section 1. Chapter 739, Florida Statutes, consisting of  
 52 sections 739.101, 739.102, 739.103, 739.104, 739.201, 739.202,  
 53 739.203, 739.204, 739.205, 739.206, 739.207, 739.301, 739.401,  
 54 739.402, 739.501, 739.601, and 739.701, Florida Statutes, is  
 55 created to read:

56 739.101 Short title.--This chapter may be cited as the  
 57 "Florida Uniform Disclaimer of Property Interests Act."

58 739.102 Definitions.--As used in this chapter, the term:

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

61 (2) "Beneficiary designation" means an instrument, other  
 62 than an instrument creating or amending a trust, naming the  
 63 beneficiary of:

64 (a) An annuity or insurance policy;

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

66 (c) A security registered in beneficiary form;

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

69 (e) Any other nonprobate transfer at death.

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

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

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

77 (6) "Fiduciary" means a personal representative, trustee,  
 78 agent acting under a power of attorney, guardian, or other

79 | person authorized to act as a fiduciary with respect to the  
 80 | property of another person.

81 | (7) "Future interest" means an interest that takes effect  
 82 | in possession or enjoyment, if at all, later than the time of  
 83 | its creation.

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

88 | (9) "Jointly held property" means property held in the  
 89 | names of two or more persons under an arrangement in which all  
 90 | holders have concurrent interests and under which the last  
 91 | surviving holder is entitled to the whole of the property.  
 92 | Jointly held property does not include property held as tenants  
 93 | by the entirety.

94 | (10) "Person" includes individuals, ascertained and  
 95 | unascertained, living or not living, whether entitled to an  
 96 | interest by right of intestacy or otherwise; a government,  
 97 | governmental subdivision, agency, or instrumentality; and a  
 98 | public corporation.

99 | (11) "Time of distribution" means the time when a  
 100 | disclaimed interest would have taken effect in possession or  
 101 | enjoyment.

102 | (12) "Trust" means:

103 | (a) An express trust, including an honorary trust or a  
 104 | trust under s. 737.116, charitable or noncharitable, with  
 105 | additions thereto, whenever and however created.

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

109  
110 As used in this chapter, the term "trust" does not include a  
111 constructive trust or a resulting trust.

112        739.103 Scope.--This chapter applies to disclaimers of any  
113 interest in or power over property, whenever created. Except as  
114 provided in s. 739.701, this chapter is the exclusive means by  
115 which a disclaimer may be made under the laws of this state.

116        739.104 Power to disclaim; general requirements; when  
117 irrevocable.--

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

126        (2) With court approval, a fiduciary may disclaim, in  
127 whole or part, any interest in or power over property, including  
128 a power of appointment. Without court approval, a fiduciary may  
129 disclaim, in whole or in part, any interest in or power over  
130 property, including a power of appointment, if and to the extent  
131 that the instrument creating the fiduciary relationship  
132 explicitly grants the fiduciary the right to disclaim. In the  
133 absence of a court-appointed guardian, notwithstanding anything

134 in chapter 744 to the contrary, without court approval, a  
 135 natural guardian under s. 744.301 may disclaim on behalf of a  
 136 minor child of the natural guardian, in whole or in part, any  
 137 interest in or power over property, including a power of  
 138 appointment, which the minor child is to receive solely as a  
 139 result of another disclaimer, but only if the disclaimed  
 140 interest or power does not pass to or for the benefit of the  
 141 natural guardian as a result of the disclaimer.

142 (3) To be effective, a disclaimer must be in writing,  
 143 declare the writing as a disclaimer, describe the interest or  
 144 power disclaimed, and be signed by the person making the  
 145 disclaimer and witnessed and acknowledged in the manner provided  
 146 for deeds of real estate to be recorded in this state. In  
 147 addition, for a disclaimer to be effective, an original of the  
 148 disclaimer must be delivered or filed in the manner provided in  
 149 s. 739.301.

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

153 (5) A disclaimer becomes irrevocable when any conditions  
 154 to which the disclaimant has made the disclaimer subject are  
 155 satisfied and when the disclaimer is delivered or filed pursuant  
 156 to s. 739.301 or it becomes effective as provided in ss.  
 157 739.201-739.207, whichever occurs later.

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

160 739.201 Disclaimer of interest in property.--Except for a  
 161 disclaimer governed by s. 739.202, s. 739.203, or s. 739.204,

162 the following rules apply to a disclaimer of an interest in  
 163 property:

164 (1) The disclaimer takes effect as of the time the  
 165 instrument creating the interest becomes irrevocable or, if the  
 166 interest arose under the law of intestate succession, as of the  
 167 time of the intestate's death.

168 (2) The disclaimed interest passes according to any  
 169 provision in the instrument creating the interest providing  
 170 explicitly for the disposition of the interest, should it be  
 171 disclaimed, or of disclaimed interests in general.

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

174 (a) If the disclaimant is an individual, the disclaimed  
 175 interest passes as if the disclaimant had died immediately  
 176 before the interest was created, unless under the governing  
 177 instrument or other applicable law the disclaimed interest is  
 178 contingent on surviving to the time of distribution, in which  
 179 case the disclaimed interest passes as if the disclaimant had  
 180 died immediately before the time of distribution. However, if by  
 181 law or under the governing instrument the descendants of the  
 182 disclaimant would share in the disclaimed interest by any method  
 183 of representation had the disclaimant died before the time of  
 184 distribution, the disclaimed interest passes only to the  
 185 descendants of the disclaimant who survive the time of  
 186 distribution. For purposes of this subsection, a disclaimed  
 187 interest is created at the death of the benefactor or at such  
 188 earlier time, if any, that the benefactor's transfer of the  
 189 interest is a completed gift for federal gift tax purposes. Also

190 for purposes of this subsection, a disclaimed interest in a  
 191 trust described in s. 733.707(3) shall pass as if the interest  
 192 had been created under a will.

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

195 (c) Upon the disclaimer of a preceding interest, a future  
 196 interest held by a person other than the disclaimant takes  
 197 effect as if the disclaimant had died or ceased to exist  
 198 immediately before the time of distribution, but a future  
 199 interest held by the disclaimant is not accelerated in  
 200 possession or enjoyment as a result of the disclaimer.

201 739.202 Disclaimer of rights of survivorship in jointly  
 202 held property.--

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

204 (a) If, during the deceased holder's lifetime, the  
 205 deceased holder could have unilaterally regained a portion of  
 206 the property attributable to the deceased holder's contributions  
 207 without the consent of any other holder, another holder may  
 208 disclaim, in whole or in part, a fractional share of that  
 209 portion of the property attributable to the deceased holder's  
 210 contributions determined by dividing the number one by the  
 211 number of joint holders alive immediately after the death of the  
 212 holder to whose death the disclaimer relates.

213 (b) For all other jointly held property, another holder  
 214 may disclaim, in whole or in part, a fraction of the whole of  
 215 the property the numerator of which is one and the denominator  
 216 of which is the product of the number of joint holders alive  
 217 immediately before the death of the holder to whose death the



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218 disclaimer relates multiplied by the number of joint holders  
 219 alive immediately after the death of the holder to whose death  
 220 the disclaimer relates.

221 (2) A disclaimer under subsection (1) takes effect as of  
 222 the death of the holder of jointly held property to whose death  
 223 the disclaimer relates.

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

227 739.203 Disclaimer of property held as tenancy by the  
 228 entirety.--

229 (1) The survivorship interest in property held as a  
 230 tenancy by the entirety to which the survivor succeeds by  
 231 operation of law upon the death of the co-tenant may be  
 232 disclaimed as provided in this chapter. For purposes of this  
 233 chapter only, the deceased tenant's interest in property held as  
 234 a tenancy by the entirety shall be deemed to be an undivided  
 235 one-half interest.

236 (2) A disclaimer under subsection (1) takes effect as of  
 237 the death of the deceased tenant to whose death the disclaimer  
 238 relates.

239 (3) The survivorship interest in property held as a  
 240 tenancy by the entirety disclaimed by the surviving tenant  
 241 passes as if the disclaimant had predeceased the tenant to whose  
 242 death the disclaimer relates.

243 (4) A disclaimer of an interest in real property held as  
 244 tenants by the entirety does not cause the disclaimed interest

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245 to be homestead property for purposes of descent and  
 246 distribution under ss. 732.401 and 732.4015.

247 739.204 Disclaimer of interest by trustee.--If a trustee  
 248 having the power to disclaim under the instrument creating the  
 249 fiduciary relationship or pursuant to court order disclaims an  
 250 interest in property that otherwise would have become trust  
 251 property, the interest does not become trust property.

252 739.205 Disclaimer of power of appointment or other power  
 253 not held in a fiduciary capacity.--If a holder disclaims a power  
 254 of appointment or other power not held in a fiduciary capacity,  
 255 the following rules apply:

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

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

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

265 739.206 Disclaimer by appointee, object, or taker in  
 266 default of exercise of power of appointment.--

267 (1) A disclaimer of an interest in property by an  
 268 appointee of a power of appointment takes effect as of the time  
 269 the instrument by which the holder exercises the power becomes  
 270 irrevocable.

271 (2) A disclaimer of an interest in property by an object,  
 272 or taker in default of an exercise of a power of appointment,

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273 takes effect as of the time the instrument creating the power  
 274 becomes irrevocable.

275 739.207 Disclaimer of power held in fiduciary capacity.--

276 (1) If a fiduciary disclaims a power held in a fiduciary  
 277 capacity which has not been exercised, the disclaimer takes  
 278 effect as of the time the instrument creating the power becomes  
 279 irrevocable.

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

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

287 739.301 Delivery or filing.--

288 (1) Subject to subsections (2) through (12), delivery of a  
 289 disclaimer may be effected by personal delivery, first-class  
 290 mail, or any other method that results in its receipt. A  
 291 disclaimer sent by first-class mail shall be deemed to have been  
 292 delivered on the date it is postmarked. Delivery by any other  
 293 method shall be effective upon receipt by the person to whom the  
 294 disclaimer is to be delivered under this section.

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

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

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

304       (3) In the case of a disclaimer of an interest in a  
 305 testamentary trust:

306       (a) The disclaimer must be delivered to the trustee  
 307 serving when the disclaimer is delivered or, if no trustee is  
 308 then serving, to the personal representative of the decedent's  
 309 estate; or

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

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

316       (a) The disclaimer must be delivered to the trustee  
 317 serving when the disclaimer is delivered;

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

321       (c) If the disclaimer is made before the time the  
 322 instrument creating the trust becomes irrevocable, the  
 323 disclaimer must be delivered to the grantor of the revocable  
 324 trust or the transferor of the interest or to such person's  
 325 legal representative.

326       (5) In the case of a disclaimer of an interest created by  
 327 a beneficiary designation made before the time the designation

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328 becomes irrevocable, the disclaimer must be delivered to the  
329 person making the beneficiary designation or to such person's  
330 legal representative.

331 (6) In the case of a disclaimer of an interest created by  
332 a beneficiary designation made after the time the designation  
333 becomes irrevocable, the disclaimer must be delivered to the  
334 person obligated to distribute the interest.

335 (7) In the case of a disclaimer by a surviving holder of  
336 jointly held property, or by the surviving tenant in property  
337 held as a tenancy by the entirety, the disclaimer must be  
338 delivered to the person to whom the disclaimed interest passes  
339 or, if such person cannot reasonably be located by the  
340 disclaimant, the disclaimer must be delivered as provided in  
341 subsection (2).

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

345 (a) The disclaimer must be delivered to the holder of the  
346 power or to the fiduciary acting under the instrument that  
347 created the power; or

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

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

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

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

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

363        (11) In the case of a disclaimer of a power exercisable by  
 364 an agent, other than a power exercisable by a fiduciary over a  
 365 trust or estate, the disclaimer must be delivered to the  
 366 principal or the principal's representative.

367        (12) Notwithstanding subsection (1), delivery of a  
 368 disclaimer of an interest in or relating to real estate shall be  
 369 presumed upon the recording of the disclaimer in the office of  
 370 the clerk of the court of the county or counties where the real  
 371 estate is located.

372        (13) A fiduciary or other person having custody of the  
 373 disclaimed interest is not liable for any otherwise proper  
 374 distribution or other disposition made without actual notice of  
 375 the disclaimer or, if the disclaimer is barred under s. 739.402,  
 376 for any otherwise proper distribution or other disposition made  
 377 in reliance on the disclaimer, if the distribution or  
 378 disposition is made without actual knowledge of the facts  
 379 constituting the bar of the right to disclaim.

380        739.401 When disclaimer is permitted.--A disclaimer may be  
 381 made at any time unless barred under s. 739.402.

382        739.402 When disclaimer is barred or limited.--

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

385       (2) A disclaimer of an interest in property is barred if  
386 any of the following events occurs before the disclaimer becomes  
387 effective:

388       (a) The disclaimer accepts the interest sought to be  
389 disclaimed;

390       (b) The disclaimant voluntarily assigns, conveys,  
391 encumbers, pledges, or transfers the interest sought to be  
392 disclaimed or contracts to do so;

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

395       (d) The disclaimant is insolvent when the disclaimer  
396 becomes irrevocable.

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

400       (4) A disclaimer, in whole or in part, of the future  
401 exercise of a power not held in a fiduciary capacity is not  
402 barred by its previous exercise unless the power is exercisable  
403 in favor of the disclaimant.

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

406       739.501 Tax-qualified disclaimer.--Notwithstanding any  
407 other provision of this chapter, if, as a result of a disclaimer  
408 or transfer, the disclaimed or transferred interest is treated  
409 pursuant to the provisions of s. 2518 of the Internal Revenue  
410 Code of 1986 as never having been transferred to the

411 disclaimant, the disclaimer or transfer is effective as a  
 412 disclaimer under this chapter.

413 739.601 Recording of disclaimer relating to real estate.--

414 (1) A disclaimer of an interest in or relating to real  
 415 estate does not provide constructive notice to all persons  
 416 unless the disclaimer contains a legal description of the real  
 417 estate to which the disclaimer relates and unless the disclaimer  
 418 is filed for recording in the office of the clerk of the court  
 419 in the county or counties where the real estate is located.

420 (2) An effective disclaimer meeting the requirements of  
 421 subsection (1) constitutes constructive notice to all persons  
 422 from the time of filing. Failure to record the disclaimer does  
 423 not affect its validity as between the disclaimant and persons  
 424 to whom the property interest or power passes by reason of the  
 425 disclaimer.

426 739.701 Application to existing relationships.--Except as  
 427 otherwise provided in s. 739.402, an interest in or power over  
 428 property existing on July 1, 2005, as to which the time for  
 429 delivering or filing a disclaimer under laws superseded by this  
 430 chapter has not expired, may be disclaimed after July 1, 2005.

431 Section 2. Section 731.201, Florida Statutes, is amended  
 432 to read:

433 731.201 General definitions.--Subject to additional  
 434 definitions in subsequent chapters that are applicable to  
 435 specific chapters or parts, and unless the context otherwise  
 436 requires, in this code, in s. 409.9101, and in chapters 737,  
 437 738, 739, and 744, the term:



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

442 (2) "Beneficiary" means heir at law in an intestate estate  
443 and devisee in a testate estate. The term "beneficiary" does not  
444 apply to an heir at law or a devisee after that person's  
445 interest in the estate has been satisfied. In the case of a  
446 devise to an existing trust or trustee, or to a trust or trustee  
447 described by will, the trustee is a beneficiary of the estate.  
448 Except as otherwise provided in this subsection, the beneficiary  
449 of the trust is not a beneficiary of the estate of which that  
450 trust or the trustee of that trust is a beneficiary. However, if  
451 each trustee is also a personal representative of the estate,  
452 the beneficiary or beneficiaries of the trust as defined in s.  
453 737.303(4)(b) shall be regarded as a beneficiary of the estate.

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

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

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

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

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

468 (8) "Devise," when used as a noun, means a testamentary  
 469 disposition of real or personal property and, when used as a  
 470 verb, means to dispose of real or personal property by will or  
 471 trust. The term includes "gift," "give," "bequeath," "bequest,"  
 472 and "legacy." A devise is subject to charges for debts,  
 473 expenses, and taxes as provided in this code, the will, or the  
 474 trust.

475 (9) "Devisee" means a person designated in a will or trust  
 476 to receive a devise. Except as otherwise provided in this  
 477 subsection, in the case of a devise to an existing trust or  
 478 trustee, or to a trust or trustee of a trust described by will,  
 479 the trust or trustee, rather than the beneficiaries of the  
 480 trust, is the devisee. However, if each trustee is also a  
 481 personal representative of the estate, the beneficiary or  
 482 beneficiaries of the trust as defined in s. 737.303(4)(b) shall  
 483 be regarded as a devisee.

484 (10) "Distributee" means a person who has received estate  
 485 property from a personal representative or other fiduciary other  
 486 than as a creditor or purchaser. A testamentary trustee is a  
 487 distributee only to the extent of distributed assets or  
 488 increments to them remaining in the trustee's hands. A  
 489 beneficiary of a testamentary trust to whom the trustee has  
 490 distributed property received from a personal representative is  
 491 a distributee. For purposes of this provision, "testamentary

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492 trustee" includes a trustee to whom assets are transferred by  
493 will, to the extent of the devised assets.

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

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

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

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

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

503 (16) "Formal notice" means formal notice under the Florida  
504 Probate Rules.

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

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

511 (19) "Incompetent" means a minor or a person adjudicated  
512 incompetent.

513 (20) "Informal notice" or "notice" means informal notice  
514 under the Florida Probate Rules.

515 (21) "Interested person" means any person who may  
516 reasonably be expected to be affected by the outcome of the  
517 particular proceeding involved. In any proceeding affecting the  
518 estate or the rights of a beneficiary in the estate, the  
519 personal representative of the estate shall be deemed to be an

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520 interested person. In any proceeding affecting the expenses of  
521 the administration and obligations of a decedent's estate, or  
522 any claims described in s. 733.702(1), the trustee of a trust  
523 described in s. 733.707(3) is an interested person in the  
524 administration of the grantor's estate. The term does not  
525 include a beneficiary who has received complete distribution.  
526 The meaning, as it relates to particular persons, may vary from  
527 time to time and must be determined according to the particular  
528 purpose of, and matter involved in, any proceedings.

529 (22) "Letters" means authority granted by the court to the  
530 personal representative to act on behalf of the estate of the  
531 decedent and refers to what has been known as letters  
532 testamentary and letters of administration. All letters shall be  
533 designated "letters of administration."

534 (23) "Other state" means any state of the United States  
535 other than Florida and includes the District of Columbia, the  
536 Commonwealth of Puerto Rico, and any territory or possession  
537 subject to the legislative authority of the United States.

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

540 (25) "Personal representative" means the fiduciary  
541 appointed by the court to administer the estate and refers to  
542 what has been known as an administrator, administrator cum  
543 testamento annexo, administrator de bonis non, ancillary  
544 administrator, ancillary executor, or executor.

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

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

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

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

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

559 (31) "Residuary devise" means a devise of the assets of  
560 the estate which remain after the provision for any devise which  
561 is to be satisfied by reference to a specific property or type  
562 of property, fund, sum, or statutory amount. If the will  
563 contains no devise which is to be satisfied by reference to a  
564 specific property or type of property, fund, sum, or statutory  
565 amount, "residuary devise" or "residue" means a devise of all  
566 assets remaining after satisfying the obligations of the estate.

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

568 (33) "Security interest" means a security interest as  
569 defined in s. 671.201.

570 (34) "Trust" means an express trust, private or  
571 charitable, with additions to it, wherever and however created.  
572 It also includes a trust created or determined by a judgment or  
573 decree under which the trust is to be administered in the manner  
574 of an express trust. "Trust" excludes other constructive trusts,

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575 | and it excludes resulting trusts; conservatorships; custodial  
 576 | arrangements pursuant to the Florida Uniform Transfers to Minors  
 577 | Act; business trusts providing for certificates to be issued to  
 578 | beneficiaries; common trust funds; land trusts under s. 689.05;  
 579 | trusts created by the form of the account or by the deposit  
 580 | agreement at a financial institution; voting trusts; security  
 581 | arrangements; liquidation trusts; trusts for the primary purpose  
 582 | of paying debts, dividends, interest, salaries, wages, profits,  
 583 | pensions, or employee benefits of any kind; and any arrangement  
 584 | under which a person is nominee or escrowee for another.

585 |       (35) "Trustee" includes an original, additional,  
 586 | surviving, or successor trustee, whether or not appointed or  
 587 | confirmed by court.

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

593 |       Section 3. Paragraph (b) of subsection (8) of section  
 594 | 121.091, Florida Statutes, is amended to read:

595 |       121.091 Benefits payable under the system.--Benefits may  
 596 | not be paid under this section unless the member has terminated  
 597 | employment as provided in s. 121.021(39)(a) or begun  
 598 | participation in the Deferred Retirement Option Program as  
 599 | provided in subsection (13), and a proper application has been  
 600 | filed in the manner prescribed by the department. The department  
 601 | may cancel an application for retirement benefits when the  
 602 | member or beneficiary fails to timely provide the information

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603 and documents required by this chapter and the department's  
 604 rules. The department shall adopt rules establishing procedures  
 605 for application for retirement benefits and for the cancellation  
 606 of such application when the required information or documents  
 607 are not received.

608 (8) DESIGNATION OF BENEFICIARIES.--

609 (b) A designated beneficiary of a retirement account for  
 610 whom there is a monetary interest may disclaim his or her  
 611 monetary interest as provided in chapter 739 s. 689.21, and in  
 612 accordance with division rules governing such disclaimers. Such  
 613 disclaimer must be filed within 24 months after the event that  
 614 created the interest, that is, the death of the member or  
 615 annuitant.

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

618 710.121 Renunciation, resignation, death, or removal of  
 619 custodian; designation of successor custodian.--

620 (1) A person nominated under s. 710.104 or designated  
 621 under s. 710.111 as custodian may decline to serve by delivering  
 622 a valid disclaimer under chapter 739 s. 689.21 to the person who  
 623 made the nomination or to the transferor or the transferor's  
 624 legal representative. If the event giving rise to a transfer has  
 625 not occurred and no substitute custodian able, willing, and  
 626 eligible to serve was nominated under s. 710.104, the person who  
 627 made the nomination may nominate a substitute custodian under s.  
 628 710.104; otherwise, the transferor or the transferor's legal  
 629 representative shall designate a substitute custodian at the  
 630 time of the transfer, in either case from among the persons

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631 eligible to serve as custodian for that kind of property under  
632 s. 710.111(1). The custodian so designated has the rights of a  
633 successor custodian.

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

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