

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 1824

INTRODUCER: Senator Aronberg

SUBJECT: Probate

DATE: March 14, 2006

REVISED: 03/16/06

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Chinn</u> | <u>Maclure</u> | <u>JU</u> | Favorable |
| 2. | <u></u> | <u></u> | <u>BI</u> | <u></u> |
| 3. | <u></u> | <u></u> | <u></u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> | <u></u> |
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| 6. | <u></u> | <u></u> | <u></u> | <u></u> |

I. Summary:

This bill revises procedures relating to the administration of a decedent's estate. Statutes providing for access to a decedent's safe-deposit box are revised in both the Financial Institutions chapter and the Probate Code for consistency in application and to address specific provisions relating to surviving co-lessees of a safe-deposit box. The proposed language would revise provisions relating to notice of administration of a decedent's estate, requiring that additional information be included to clarify the filing deadlines for beneficiaries. Additional clarification is provided in sections on elective shares and exempt property to allow for claims "on or *before*" the filing deadlines, provided in the respective sections, for the following purposes:

- Filing any objection that challenges the validity of a will, the qualifications of a personal representative, the venue, or the jurisdiction of the court;
- Filing a petition for determination of exempt property; and
- Filing and withdrawing an election to take an elective share.

This bill substantially amends the following sections of the Florida Statutes: 655.935, 655.936, 655.937, 732.2135, 732.402, 733.212, and 733.6065.

II. Present Situation:

Safe-Deposit Box Access

Procedures for granting access to safe-deposit boxes to a personal representative (PR) or a fiduciary are currently addressed in the banking code and the probate code.¹ The last time that these provisions² were amended in any substantive manner was in 2001, when the Legislature extensively revised the Probate Code.³ The 2001 revision created s. 733.6065, F.S.,⁴ addressing the initial opening of a safe-deposit box with the PR of a decedent lessee. Section 655.936, F.S., addressing search procedures upon the death of a lessee, was revised to cross-reference to the new section. The two provisions seemingly conflict and have resulted in inconsistent application relating to which section applies prior to the appointment of a PR and which section applies after the appointment.

Financial Institutions (Chapter 655, F.S.)

Currently, ss. 655.93-655.94, F.S., of the banking code address general matters relating to safe-deposit boxes as they relate to the banking institutions, and s. 733.6065, F.S., addresses procedures relating to safe-deposit boxes in the event of the death of a lessee.

Section 655.933, F.S., provides for access to safe deposit boxes where the lessor⁵ allows access to someone other than the lessee.⁶ A lessor may provide access to:

- One or more persons acting as a PR;
- One or more persons otherwise acting as fiduciaries if authorized in writing, which writing is signed by all other persons acting as a fiduciary;
- Any agent authorized in writing, which writing is signed by all persons acting as a fiduciary.⁷

In the event of the death of a lessee, s. 655.935, F.S., requires the lessor to allow access to the safe-deposit box to the person named in a court order for that purpose or to a relative⁸ or PR of the lessee in the absence of a court order.⁹ The access permitted under this statute is for the purpose of opening and examining the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor. The person who has access to a safe-deposit box under s. 655.935, F.S., may request the lessor to deliver:

- Any writing purporting to be a will of the decedent, to the court having probate jurisdiction in the county in which the financial institution is located;

¹ Sections 655.93-655.94, and 733.6065, F.S., respectively.

² Specifically, ss. 655.936 and 733.6065, F.S.

³ Chapter 2001-226, L.O.F.

⁴ Formerly located at s. 733.604(1)(b), F.S. (2000).

⁵ “Lessor” is defined in s. 655.93(2), F.S., as a “financial institution that rents safe-deposit facilities.”

⁶ “Lessee” is defined in s. 655.93(1), F.S., as a “person who contracts with a lessor for the use of a safe-deposit box.”

⁷ Section 655.933, F.S.

⁸ *E.g.*, spouse, parent, or adult descendant.

⁹ The rights of a co-lessee are not addressed under this section.

- Any writing purporting to be a deed to a burial plot or to give burial instructions, to the person making the request for a search; and
- Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.¹⁰

Delivery of contents not mentioned above is addressed in s. 655.936, F.S. This section provides for the lessor to deliver all contents of, or grant access to remove contents from, a safe-deposit box to a “resident” PR upon a showing of a certified copy of a letter of authority.¹¹ The statute provides for the discretionary release of the contents of a safe-deposit box to a “foreign” PR and provides conditions that must be satisfied for such release.¹² The section also cross-references to s. 733.6065, F.S., to require that a lessor permit the initial opening and removal of contents of a safe-deposit box pursuant to the administration of the decedent’s estate.

A separate set of provisions is provided in s. 655.937, F.S., for safe-deposit boxes leased in more than one name. Under this section, when specifically provided in the lease, access will be granted to either lessee, or to either or the survivor, or to the PR of a deceased co-lessee.

Probate Code (Chapter 733, F.S.)

Section 733.6065, F.S., provides for the “initial opening” of a safe-deposit box in the course of the administration of one’s estate. The rights under this section are cumulative¹³ to rights under s. 655.935, F.S., relating to the right to open and examine the contents of a safe-deposit box. An initial opening under this section must be presided over by any two of the following: an employee of the institution where the box is located, the personal representative of the decedent, or the personal representative’s attorney of record. During the initial opening, each person present must verify and sign an inventory of the contents of the safe-deposit box. The PR must then file the inventory along with a copy of selected portions of the box entry records. The PR may remove the contents of the box.

General Provisions Relating to Probate

Elective Share Provisions (Part II, Chapter 732, F.S.)

Under Florida law, the surviving spouse of a person who dies domiciled in Florida has the right to a share of the elective estate of the decedent, which is referred to as an “elective share.”¹⁴ The elective share is the right of a surviving spouse to a minimum share of the deceased spouse’s estate. A spouse who files an election to take the elective share foregoes the inheritance in the will, and takes the elective share instead. Section 732.2035, F.S., provides a listing of which property interests are considered as part of the elective estate upon which the elective share is based.

¹⁰ Section 655.935, F.S.

¹¹ It can be implied from comments describing a “foreign” PR in s. 655.936(2), F.S., that a “resident” denotes one who has been appointed by a court of this state to act as personal representative for a decedent.

¹² Section 655.936(2), F.S. This subsection provides that a “foreign” PR is someone who has been appointed to represent the decedent by a court of another state.

¹³ See CS/SB 402: Probate Code, *Senate Staff Analysis and Economic Impact Statement*, Judiciary Committee, March 14, 2001, p. 30. The language proposed in SB 1824 would provide that the rights under s. 733.6065(1), F.S., are separate from the rights under s. 655.935, F.S.

¹⁴ Section 732.201, F.S.

If a decedent's spouse chooses to take the elective share, the election must be filed within the earlier of the following:

- Six months of the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse; or
- Two years after the date of the decedent's death.¹⁵

If the spouse chooses to withdraw an election, he or she has eight months from the date of the decedent's death and before the court's order of contribution.¹⁶ If an election is withdrawn, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.

Property Exempt from Creditor Claims (Part IV, Chapter 732, F.S.)

Section 732.402, F.S., provides that if a decedent was domiciled in this state at the time of death, the surviving spouse, or, if there is no surviving spouse, the children of the decedent have the right to a share of "exempt property." By exempt property, the section is referring to property that is protected from claims against the estate and given to beneficiaries regardless of whether there are claims against the estate. Among the property considered exempt for purposes of this section are:

- Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$10,000 as of the date of death;
- All automobiles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal automobiles;
- Florida Prepaid College Program contracts and Florida College Savings agreements; and
- All death benefits paid to teachers and school administrators under s. 112.1915, F.S.

Exempted property passes to beneficiaries in addition to protected homestead, statutory entitlements, and property passing under the will or by intestate succession.¹⁷

Persons entitled to exempt property must file a petition for determination of exempt property within four months after the date of service of the notice of administration or within 40 days from the date of termination of any proceeding involving the construction, admission to probate, or validity of the will or involving any other matter affecting any part of the estate under s. 732.404, F.S.

Notice of Administration; Filing of Objections (Part II, Chapter 733, F.S.)

A personal representative must prepare a notice of administration of the decedent's estate and serve a copy of the notice on the decedent's surviving spouse, beneficiaries, trustee of any trust

¹⁵ Section 732.2135(1), F.S. The spouse may file for and receive an extension of time to make an election within the time period provided in subsection (1) for good cause shown. Section 732.2135(2), F.S.

¹⁶ Section 732.2135(3), F.S.

¹⁷ Section 732.402(4), F.S.

associated with the decedent,¹⁸ and anyone who may be entitled to exempt property.¹⁹ The notice must include:

- The name of the decedent;
- The file number of the estate;
- The designation and address of the court in which the proceedings are pending;
- Whether the estate is testate or intestate, and, if testate, the date of the will and any codicils; and
- The name and address of the personal representative, and the name and address of the personal representative's attorney.²⁰

The notice must also include statement that interested persons are required to file with the court any objection by an interested person on whom the notice was served that challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court within three months after the date of service of a copy of the notice of administration on the objecting person.²¹

The notice provision at s. 733.212, F.S., also provides immunity from liability for PRs who provide notice of administration and for PRs who in good faith fail to give notice under this section.

III. Effect of Proposed Changes:

Safe-Deposit Box Access

The bill revises s. 655.935, F.S., relating to safe-deposit box procedures upon the death of a lessee, and s. 733.6065, F.S., relating to the initial opening of a safe-deposit box with the PR of a decedent lessee. The revisions clarify that the procedures in these statutes are mutually exclusive because the former statute applies prior to the appointment of the personal representative (PR) and the latter statute applies after the appointment of the PR. Language added to s. 655.935, F.S., explicitly provides that access under this section “shall not be considered an initial opening.”²² Additionally, the current wording of s. 733.6065, F.S., providing that rights with relation to the two sections are cumulative, is revised to read that rights in s. 655.935, F.S., are “separate from” rights provided under this section.²³

The bill also clarifies that the ability to examine contents of a safe-deposit box based upon ss. 655.935 and 733.6065, F.S., is the same, regardless of whether there is a surviving co-lessee. The co-lessee does, however, maintain a right to access the safe-deposit box that is not subject to the provisions of the aforementioned statutes.²⁴ New s. 655.937(5), F.S., also adds provisions to

¹⁸ Specifically, trusts provided in s. 733.707(3), F.S.

¹⁹ Section 733.212(1), F.S.

²⁰ Section 733.212(2), F.S.

²¹ *Id.*

²² Senate Bill 1824, p. 2, lines 17-20.

²³ *Id.* at p. 10, line 6.

²⁴ New s. 655.937(4), F.S.

outline a permissive procedure for a voluntary inventory by a co-lessee in the event of the death of another co-lessee.

With respect to provisions in s. 655.936, F.S., outlining the delivery of safe-deposit box contents or property held in safekeeping to a PR, the terms “resident” and “foreign” are removed by the bill. The terms are replaced with the descriptions of a PR appointed by a court in this state and a PR appointed by a court in any other state, respectively.

General Provisions Relating to Probate

In addition to some of the more nuanced revisions specific to each probate section revised by the bill (discussed below), the proposed language would clarify deadlines in order to address an interpretation found in common law. In *May v. Illinois National Insurance Co.*,²⁵ the Florida Supreme Court held that language similar to the language used in these statutes²⁶ caused a creditor’s claim filed *prior* to publication of the notice of administration to be untimely and ineffective. In that case, the creditor had filed a “Statement of Claim” as part of other legal proceedings associated with a wrongful death claim *before* the estate was administered. To address the concerns raised in *May*, the revisions proposed in the bill would allow for claims “on or *before*” the filing deadlines, provided in the respective sections, for the following purposes:

- Filing any objection that challenges the validity of a will, the qualifications of a personal representative, the venue, or the jurisdiction of the court;
- Filing a petition for determination of exempt property; and
- Filing and withdrawing an election to take an elective share.

Elective Share Provisions (Part II, Chapter 732, F.S.)

The bill amends s. 732.2135, F.S., to provide that a surviving spouse must file for the elective share election “on or before” (instead of “within” as the section currently reads) the earlier of the date that is six months after the date of service of a copy of the notice of administration or the date that is two years after the date of the decedent’s death.

Section 732.2135, F.S., is also amended to provide that the surviving spouse, guardian, or personal representative may withdraw an elective share election “on or before the earlier of the date that is” eight months after the date of the decedent’s death or the date of a court order of contribution. This bill removes the word “within,” and allows people entitled to an elective share to file anytime before the time limit provided instead of having to file in between certain periods of time.

Property Exempt from Creditor Claims (Part IV, Chapter 732, F.S.)

This bill amends s. 732.402, F.S., relating to exempt property, by making similar changes relating to use of the word “within” as were made in revisions to s. 732.2135, F.S., relating to the elective share. This bill provides that a person entitled to exempt property is deemed to have waived his or her rights to exempt property unless a petition of determination of exempt property is filed “on or before the later of the date that is” four months after the date of service of the

²⁵ 771 So. 2d 1143 (Fla. 2000).

²⁶ Section 733.702, F.S. (relating to non-claims in probate).

notice of administration or the date that is 40 days after the date of termination of any proceeding involving the estate.

Notice of Administration; Filing of Objections (Part II, Chapter 733, F.S.)

The proposed language revises s. 733.212, F.S., to require that a notice of administration include notice to a surviving spouse and beneficiaries of the timing deadlines for filing for an elective share and exempt property.

This bill also amends s. 733.212, F.S., to remove the word “within” from the timing requirements, provided in the notice of administration, for filing a petition or other pleading objecting to the validity of the will; the qualifications of the personal representative; the venue; or the jurisdiction of the court. This bill similarly revises the filing deadline for objections to be “on or before the date that is” (instead of “within”) three months after the date of service of a copy of the notice of administration on the objecting person, or they are forever barred. This change reflects similar revisions to the filing deadlines made to exempt property and the elective share sections.

In situations where one waives the requirement of receiving a notice of administration, a new subsection is created by the bill, s. 733.212(8), F.S., to provide that, for determining deadlines established by reference to the date of the service of a copy of the notice of administration, service is deemed to occur on the date the waiver is filed.

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires additional information to appear in the notice to beneficiaries and surviving spouses, possibly resulting in them being more informed about their rights and

any applicable deadlines to enforce their rights. This could result in these parties receiving more of the decedent's estate.

Where the personal representative cannot find a person entitled to receive a copy of the notice of administration, the personal representative is required to publish the notice in a newspaper of general circulation. The cost of publishing the notice is usually calculated per line of text, making the number of lines of the notice determine the cost to the estate. Because the bill increases the information required to be published in the notice of administration, the number of lines of the notice and therefore the cost to the estate for publishing the notice may slightly increase as a result of increased lines to the publication.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
