

By Senator Aronberg

27-911A-06

See CS/HB 521

1   A bill to be entitled  
 2            An act relating to probate; amending s.  
 3            655.935, F.S.; revising procedures relating to  
 4            opening a decedent's safe-deposit box; amending  
 5            s. 655.936, F.S.; revising procedures relating  
 6            to delivery of a decedent's safe-deposit box by  
 7            lessor; amending s. 655.937, F.S.; revising  
 8            procedures relating to granting access to  
 9            safe-deposit boxes leased in two or more names;  
 10          amending s. 732.2135, F.S.; revising provisions  
 11          relating to time of filing or withdrawing  
 12          certain estate share elections; amending s.  
 13          732.402, F.S.; revising procedures relating to  
 14          filing petitions for determinations of exempt  
 15          property; amending s. 733.212, F.S.; revising  
 16          procedures and requirements relating to notices  
 17          of administration and petitions for relief;  
 18          amending s. 733.6065, F.S.; revising procedures  
 19          relating to the opening of a safe-deposit box  
 20          leased or co-leased by decedent; providing an  
 21          effective date.

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

24  
25                Section 1.   Section 655.935, Florida Statutes, is  
26 amended to read:

27                655.935   Search procedure on death of lessee.--If  
28 satisfactory proof of the death of the lessee is presented, a  
29 lessor shall permit the person named in a court order for the  
30 purpose, or if no order has been served upon the lessor, the  
31 spouse, a parent, an adult descendant, or a person named as a

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 personal representative in a copy of a purported will produced  
2 by such person, to open and examine the contents of a  
3 safe-deposit box leased or co-leased by a decedent, or any  
4 documents delivered by a decedent for safekeeping, in the  
5 presence of an officer of the lessor; and the lessor, if so  
6 requested by such person, shall deliver:

7 (1) Any writing purporting to be a will of the  
8 decedent, to the court having probate jurisdiction in the  
9 county in which the financial institution is located. ~~+~~

10 (2) Any writing purporting to be a deed to a burial  
11 plot or to give burial instructions, to the person making the  
12 request for a search. ~~;~~ ~~and~~

13 (3) Any document purporting to be an insurance policy  
14 on the life of the decedent, to the beneficiary named therein.

15  
16 No other contents may be removed pursuant to this section.

17 Access granted pursuant to this section shall not be  
18 considered the initial opening of the safe-deposit box  
19 pursuant to s. 733.6065 by a personal representative appointed  
20 by a court in this state.

21 Section 2. Subsections (1) and (2) of section 655.936,  
22 Florida Statutes, are amended to read:

23 655.936 Delivery of safe-deposit box contents or  
24 property held in safekeeping to personal representative.--

25 (1) Subject to the provisions of subsection (3), the  
26 lessor shall immediately deliver to a ~~resident~~ personal  
27 representative appointed by a court in this state, upon  
28 presentation of a certified copy of his or her letters of  
29 authority, all property deposited with it by the decedent for  
30 safekeeping, and shall grant the ~~resident~~ personal  
31 representative access to any safe-deposit box in the

1 decedent's name and permit him or her to remove from such box  
2 any part or all of the contents thereof.

3 (2) If a ~~foreign~~ personal representative of a deceased  
4 lessee has been appointed by a court of any other state, a  
5 lessor may, at its discretion, after 3 months from the  
6 issuance to such ~~foreign~~ personal representative of his or her  
7 letters of authority, deliver to such ~~foreign~~ personal  
8 representative all properties deposited with it for  
9 safekeeping and the contents of any safe-deposit box in the  
10 name of the decedent if at such time the lessor has not  
11 received written notice of the appointment of a personal  
12 representative in this state, and such delivery is a valid  
13 discharge of the lessor for all property or contents so  
14 delivered. A Such-foreign personal representative appointed by  
15 a court of any other state shall furnish the lessor with an  
16 affidavit setting forth facts showing the domicile of the  
17 deceased lessee to be other than this state and stating that  
18 there are no unpaid creditors of the deceased lessee in this  
19 state, together with a certified copy of his or her letters of  
20 authority. A lessor making delivery pursuant to this  
21 subsection shall maintain in its files a receipt executed by  
22 such ~~foreign~~ personal representative which itemizes in detail  
23 all property so delivered.

24 Section 3. Section 655.937, Florida Statutes, is  
25 amended to read:

26 655.937 Access to safe-deposit boxes leased in two or  
27 more names.--

28 (1) Unless ~~When~~ specifically provided in the lease or  
29 rental agreement to the contrary, when covering a safe-deposit  
30 box is heretofore or hereafter rented or leased in the names  
31 of two or more lessees, ~~that access to the safe deposit box~~

1 ~~will be granted to either lessee, or to either or the~~  
2 ~~survivor,~~ access to the safe-deposit box shall be granted to:  
3       (a) Either or any of such lessees, regardless of  
4 whether or not the other lessee or lessees or any of them are  
5 living or competent.  
6       **(b) Subject to s. 655.933, those persons named in s.**  
7 **655.933.**  
8       **(c) Subject to s. 655.935, those persons named in s.**  
9 **655.935.**~~or~~  
10       **(d)**~~(b)~~ **Subject to s. 733.6065,** the personal  
11 representative of the estate of either or any of such lessees  
12 who is deceased, or the guardian of the property of either or  
13 any of such lessees who is incapacitated.~~; and,~~  
14       **(2) In all cases described in subsection (1), either**  
15 ~~such case, the provisions of s. 655.933 apply, and the~~  
16 signature on the safe-deposit entry or access record (or the  
17 receipt or acquittance, in the case of property or documents  
18 otherwise held for safekeeping) is a valid and sufficient  
19 release and discharge to the lessor for granting access to  
20 such safe-deposit box or for the delivery of such property or  
21 documents otherwise held for safekeeping.  
22       **(3)**~~(2)~~ A lessor may not be held liable for damages or  
23 penalty by reason of any access granted or delivery made  
24 pursuant to this section.  
25       **(4) The right of access by a co-lessee is separate**  
26 **from the rights and responsibilities of other persons who may**  
27 **be granted access to a safe-deposit box after the death or**  
28 **incapacity of another co-lessee and such right of access is**  
29 **not subject to the provisions of s. 655.935, s. 733.6065, or**  
30 **other requirements imposed upon personal representatives,**  
31 **guardians, or other fiduciaries.**

1           (5) After the death of a co-lessee, the surviving  
2 co-lessee or any other person who is granted access to the  
3 safe-deposit box pursuant to this section may make a written  
4 inventory of the box which shall be conducted by the person  
5 making the request in the presence of one other person as  
6 specified in this subsection. Each person present shall verify  
7 the contents of the box by signing a copy of the inventory  
8 under penalties of perjury.

9           (a) If the person making the written inventory is a  
10 surviving co-lessee, the other person may be any other person  
11 granted access pursuant to this section, an employee of the  
12 institution at which the box is located, or an attorney  
13 licensed in this state.

14           (b) If the person making the written inventory is not  
15 a surviving co-lessee, the other person may be a surviving  
16 co-lessee, an employee of the institution at which the box is  
17 located, or an attorney licensed in this state.

18           Section 4. Subsections (1) and (3) of section  
19 732.2135, Florida Statutes, are amended to read:

20           732.2135 Time of election; extensions; withdrawal.--

21           (1) Except as provided in subsection (2), the election  
22 must be filed on or before ~~within~~ the earlier of the date that  
23 is 6 months after ~~of~~ the date of service of a copy of the  
24 notice of administration on the surviving spouse, or an  
25 attorney in fact or guardian of the property of the surviving  
26 spouse, or the date that is 2 years after the date of the  
27 decedent's death.

28           (3) The surviving spouse or an attorney in fact,  
29 guardian of the property, or personal representative of the  
30 surviving spouse may withdraw an election on or before the  
31 earlier of the date that is ~~at any time within~~ 8 months after

1 the date of the decedent's death or the date of a court ~~and~~  
2 ~~before the court's~~ order of contribution. If an election is  
3 withdrawn, the court may assess attorney's fees and costs  
4 against the surviving spouse or the surviving spouse's estate.

5 Section 5. Subsection (6) of section 732.402, Florida  
6 Statutes, is amended to read:

7 732.402 Exempt property.--

8 (6) Persons entitled to exempt property shall be  
9 deemed to have waived their rights under this section unless a  
10 petition for determination of exempt property is filed by or  
11 on behalf of the persons entitled to the exempt property on or  
12 before the later of the date that is ~~within~~ 4 months after the  
13 date of service of the notice of administration or the date  
14 that is ~~within~~ 40 days after ~~from~~ the date of termination of  
15 any proceeding involving the construction, admission to  
16 probate, or validity of the will or involving any other matter  
17 affecting any part of the estate subject to this section.

18 Section 6. Section 733.212, Florida Statutes, is  
19 amended to read:

20 733.212 Notice of administration; filing of  
21 objections.--

22 (1) The personal representative shall promptly serve a  
23 copy of the notice of administration on the following persons  
24 who are known to the personal representative:

- 25 (a) The decedent's surviving spouse;
- 26 (b) Beneficiaries;
- 27 (c) The trustee of any trust described in s.

28 733.707(3) and each beneficiary of the trust as defined in s.  
29 737.303(4)(b), if each trustee is also a personal  
30 representative of the estate; and

- 31 (d) Persons who may be entitled to exempt property

1  
2 in the manner provided for service of formal notice, unless  
3 served under s. 733.2123. The personal representative may  
4 similarly serve a copy of the notice on any devisees under a  
5 known prior will or heirs or others who claim or may claim an  
6 interest in the estate.

7 (2) The notice shall state:

8 (a) The name of the decedent, the file number of the  
9 estate, the designation and address of the court in which the  
10 proceedings are pending, whether the estate is testate or  
11 intestate, and, if testate, the date of the will and any  
12 codicils.

13 (b) The name and address of the personal  
14 representative, and the name and address of the personal  
15 representative's attorney.

16 (c) ~~The notice shall state~~ That any interested person  
17 ~~persons are required to file with the court any objection by~~  
18 ~~an interested person on whom a copy of the notice of~~  
19 ~~administration is the notice was served must file on or before~~  
20 ~~the date that is 3 months after the date of service of a copy~~  
21 ~~of the notice of administration on that person any objection~~  
22 that challenges the validity of the will, the qualifications  
23 of the personal representative, the venue, or the jurisdiction  
24 of the court ~~within 3 months after the date of service of a~~  
25 ~~copy of the notice of administration on the objecting person.~~

26 (d) That persons who may be entitled to exempt  
27 property under s. 732.402 will be deemed to have waived their  
28 rights to claim that property as exempt property unless a  
29 petition for determination of exempt property is filed by such  
30 persons or on their behalf on or before the later of the date  
31 that is 4 months after the date of service of a copy of the

1 notice of administration on such persons or the date that is  
2 40 days after the date of termination of any proceeding  
3 involving the construction, admission to probate, or validity  
4 of the will or involving any other matter affecting any part  
5 of the exempt property.

6 (e) That an election to take an elective share must be  
7 filed on or before the earlier of the date that is 6 months  
8 after the date of service of a copy of the notice of  
9 administration on the surviving spouse, or an attorney in fact  
10 or a guardian of the property of the surviving spouse, or the  
11 date that is 2 years after the date of the decedent's death.

12 (3) Any interested person on whom a copy of the notice  
13 of administration ~~is was~~ served must object to the validity of  
14 the will, the qualifications of the personal representative,  
15 the venue, or the jurisdiction of the court by filing a  
16 petition or other pleading requesting relief in accordance  
17 with the Florida Probate Rules on or before the date that is  
18 ~~within~~ 3 months after the date of service of a copy of the  
19 notice of administration on the objecting person, or those  
20 objections are forever barred.

21 (4) The appointment of a personal representative or a  
22 successor personal representative shall not extend or renew  
23 the period for filing objections under this section, unless a  
24 new will or codicil is admitted.

25 (5)~~(4)~~ The personal representative is not individually  
26 liable to any person for giving notice under this section,  
27 regardless of whether it is later determined that notice was  
28 not required by this section. The service of notice in  
29 accordance with this section shall not be construed as  
30 conferring any right.

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1           ~~(6)~~(5) If the personal representative in good faith  
2 fails to give notice required by this section, the personal  
3 representative is not liable to any person for the failure.  
4 Liability, if any, for the failure is on the estate.

5           ~~(7)~~(6) If a will or codicil is subsequently admitted  
6 to probate, the personal representative shall promptly serve a  
7 copy of a new notice of administration as required for an  
8 initial will admission.

9           (8) For the purpose of determining deadlines  
10 established by reference to the date of service of a copy of  
11 the notice of administration in cases in which such service  
12 has been waived, service shall be deemed to occur on the date  
13 the waiver is filed.

14           Section 7. Section 733.6065, Florida Statutes, is  
15 amended to read:

16           733.6065 Opening safe-deposit box.--

17           (1) Subject to the provisions of s. 655.936(2), the  
18 initial opening of ~~a the decedent's~~ safe-deposit box leased or  
19 co-leased by the decedent shall be conducted in the presence  
20 of any two of the following persons: an employee of the  
21 institution where the box is located, the personal  
22 representative, or the personal representative's attorney of  
23 record. Each person who is present must verify the contents of  
24 the box by signing a copy of the inventory under penalties of  
25 perjury. The personal representative shall file the  
26 safe-deposit box inventory, together with a copy of the box  
27 entry record from a date which is 6 months prior to the date  
28 of death to the date of inventory, with the court within 10  
29 days after the box is opened. Unless otherwise ordered by the  
30 court, this inventory and the attached box entry record is  
31 subject to inspection only by persons entitled to inspect an

1 inventory under s. 733.604(1). The personal representative may  
2 remove the contents of the box.

3 (2) The right to open and examine the contents of a  
4 safe-deposit box leased by a decedent, or any documents  
5 delivered by a decedent for safekeeping, and to receive items  
6 as provided for in s. 655.935 are separate from ~~in addition to~~  
7 the rights provided for in subsection (1).

8 Section 8. This act shall take effect July 1, 2006.

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