

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 521 CS Probate
SPONSOR(S): Hukill; Stargel; Flores; Quinones
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) Justice Council	11 Y, 0 N	Blalock	De La Paz
3)			
4)			
5)			

SUMMARY ANALYSIS

Probate is the legal process for payment of the bills of the deceased, and distribution of the deceased's property to heirs. Current law pertaining to wills and estates is provided in the Florida Probate Code. The Probate Code provides filing deadlines for various actions and proceedings. This bill revises the time period for these deadlines from "within" to a time "on or before" a certain date. This change to the filing deadlines removes the provision requiring filing between certain time periods and allows for earlier filing of certain documents.

This bill modifies the Probate Code and the banking laws to:

- Provide procedures for opening safe-deposit boxes leased or co-leased by a decedent;
- Provide search procedures of safe-deposit boxes where the lessee has died and the decedent's safe-deposit box is co-leased; and
- Provide for when access to safe-deposit boxes leased in two or more names will be granted.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may serve or benefit families who might potentially otherwise lose the right to property in an estate proceeding.

Provide limited government -- This bill appears to both increase and decrease procedural requirements in probate proceedings.

B. EFFECT OF PROPOSED CHANGES:

Background

Probate is the legal process for payment of the bills of the deceased, and distribution of the deceased's property to heirs. In general, the assets of the deceased are used first to pay the cost of the probate proceeding, than are used to pay the outstanding debts of the deceased, and the remainder paid to the heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not, the estate is "intestate", and the assets are distributed according to statute. There are two significant exceptions to these general rules. The concepts of homestead and exempt property transfer property to certain surviving dependents before such property is subject to being sold to pay creditors; and the elective share may provide a different inheritance for a surviving spouse than the spouse would otherwise receive by operation of the will and of probate law.

Commencement of Probate, Notice of Administration

A probate case is commenced by the filing of a Petition for Administration.¹ The court must appoint a personal representative, who is the person responsible to the court for collecting the assets of the deceased and transferring those assets to the creditors and heirs entitled to those assets. One of the first duties of the personal representative is to give notice to creditors and heirs of the existence of the probate proceeding and the appointment of the personal representative. This is accomplished by the publication and service of a Notice to Creditors, and by the serving of a Notice of Administration on the surviving spouse and beneficiaries.

Section 733.212, F.S., requires the personal representative to promptly serve a copy of the notice of administration upon the decedent's surviving spouse, beneficiaries, the trustee of any trust and each trust beneficiary, and persons who may be entitled to exempt property. The notice must:

- Provide the name of the decedent;
- List the file number of the estate, the designation and address of the court in which the proceedings are pending;
- Provide the name and address of the personal representative and the personal representative's attorney; and
- State 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 3 months after the date of service of a copy of the notice of administration on the objecting person.

¹ Section 733.202, F.S.

Exempt Property

The Florida Probate Code provides that if a decedent was domiciled in Florida at the time of death, the surviving spouse, or if there is no surviving spouse, the children of the decedent, have the right to take certain property, which property is not subject to being sold to pay the claims of creditors. Such property is known as "exempt property".² Exempt property consists of:

- 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;³
- 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;⁴
- Florida prepaid college program contracts purchased and Florida college savings agreements;⁵
- Death benefits for certain teachers and school administrators.⁶

Section 732.402, F.S., provides that persons entitled to exempt property are deemed to have waived their rights to such property unless (1) a petition for determination of exempt property is filed by or on behalf of the persons entitled to the exempt property within four months after the date of service of the notice of administration; or (2) 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 subject to the statute.⁷

Exempt property is in addition to protected homestead property. The entitlement to homestead property⁸ is automatic and decedent's surviving spouse or children are not required to file a petition of determination to receive the homestead property.

Elective Share

The surviving spouse of a person who dies domiciled in Florida has the right to elect to take a share of the estate of the decedent, known as the elective share,⁹ instead of the share of the estate provided for in the will or provided for in the laws of intestacy. The elective share is for the express purpose of caring for the surviving spouse.¹⁰ The elective share is 30% of the elective estate.¹¹ The elective share is reduced by the value of any property passing to the spouse in the decedent's will, under intestacy, or as a pretermitted spouse. The elective share is in addition to the spouse's right to exempt property, a family allowance, and homestead.¹²

Section 732.2135, F.S. provides that the elective share election must be filed within the earlier of (1) six months after the service of a copy of the notice of administration on the surviving spouse or attorney-in-fact or guardian of the property of the surviving spouse; or (2) two years after the decedent's death. An election may be withdrawn within eight months after the decedent's death, but before the court's order of contribution.

² Section 732.402(1), F.S.

³ Section 732.402(2)(a), F.S.

⁴ Section 732.402(2)(b), F.S.

⁵ Section 732.402(2)(c), F.S.

⁶ Section 732.402(2)(d), F.S.

⁷ Section 732.402(6), F.S.

⁸ Article X, s. 4, Fla. Const.

⁹ Section 732.201, F.S.

¹⁰ *In re Anderson's Estate*, 394 So.2d 1146 (Fla. 4th DCA 1981)

¹¹ Section 732.2065, F.S.

¹² Section 732.2105, F.S.

Timing for Filing for Elective Share and Exempt Property

Because the current law provides that the timing requirements for making an election, withdrawing an election, and filing for a petition for determination of exempt property must be "within" a certain period, it is possible that a court may find that a spouse or child of a decedent has filed a notice too early. In *May v. Illinois National Insurance Co.*, 771 So. 2d 1143 (Fla. 2000), the Florida Supreme Court held that language similar to the language used in these statutes¹³ 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. In such case, a spouse or child could lose their right to exempt property or to the elective share.

Timing of Objections to the Validity of the Will, the Personal Representative, the Venue, or the Jurisdiction of the Court

Section 733.212(3), F.S., provides that "the notice of administration shall state" that an interested person must object to the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief within 3 months after the date of service of a copy of the notice of administration on the objecting person, or the objection is forever barred. The window of time for filing an objection under this section has the same possibility of penalizing people that file too early as the filing deadlines for the elective share and exempt property.

Access to Safe-Deposit Boxes

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.¹⁴ The last time that these provisions¹⁵ were amended was in 2001, when the Legislature extensively revised the Probate Code.¹⁶ The 2001 revision created s. 733.6065, F.S.,¹⁷ 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.

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 lessor¹⁸ allows access to someone other than the lessee.¹⁹ 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; or
- Any agent authorized in writing, which writing is signed by all persons acting as a fiduciary.²⁰

¹³ Section 733.702, F.S. (relating to non-claims in probate).

¹⁴ Sections 655.93 - 655.94, F.S. and s. 733.6065, F.S.

¹⁵ Sections 655.936 and 733.6065, F.S.

¹⁶ Chapter 2001-226, L.O.F.

¹⁷ Formerly located at s. 733.604(1)(b), F.S. (2000).

¹⁸ "Lessor" is defined in s. 655.93(2), F.S., as a "financial institution that rents safe-deposit facilities."

¹⁹ "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."

²⁰ Section 655.933, F.S.

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;
- 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.²¹

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.²² 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.²³ 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.

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 in the Banking Code. The rights under this section are cumulative 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.

Effect of Bill

Timing for Filing for an Elective Share

This bill amends s. 732.2135, F.S., to provide that a surviving spouse must file for the elective share election "on or before" the earlier of the date that is 6 months after the date of service of a copy of the notice of administration or the date that is 2 years after the date of the decedent's death.

²¹ Section 655.935, F.S.

²² 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.

²³ 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.

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" 8 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.

Timing for Filing for Exempt Property

This bill amends s. 732.402, F.S., relating to exempt property, by making the same changes to the word "within" as were made in the section 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" 4 months after the date of service of the notice of administration or the date that is 40 days after the date of termination of any proceeding involving the estate.

Notice of Administration

This bill amends 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.

Timing of Objections to Validity of the Will, the Personal Representative, the Venue, or the Jurisdiction of the Court

This bill also amends s. 733.212, F.S., to remove the "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 extends the filing deadline to be "on or before the date that is" (instead of "within") 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred. This change reflects the same revision to the filing deadlines made to exempt property and the elective share.

Timing of Service

This bill creates 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.

Access to Safe-Deposit Boxes

This bill amends s. 655.935, F.S., of the banking laws, to provide that upon the death of a lessor, the lessee must allow a person qualified under this section to open and examine the contents of a safe-deposit box leased and co-leased by a decedent. Section 655.935, F.S., is also amended to provide that the access granted in this section is not to be considered the initial opening of the safe-deposit box pursuant to s. 733.6065, F.S., which is the section pertaining to the opening of a decedent's safe-deposit box.

This bill amends s. 655.937, F.S., to provide that when a safe-deposit box is leased in the names of two or more lessees, that access to the safe-deposit box will be granted to:

- Any one or more of the persons acting as personal representatives;
- Any one or more of the persons otherwise acting as fiduciaries if authorized in writing, which writing is signed by all other persons so acting;
- Any agent authorized in writing, which writing is signed by all persons acting as fiduciaries;

- The person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as a personal representative in a copy of a purported will produced by such person;
- The personal representative of the estate of either or any of such lessee who is deceased, or the guardian of the property of either or any of such lessees who is incapacitated.

This bill also provides that the right of access by a co-lessee is separate from the rights and responsibilities of other persons who may be granted access to a safe-deposit box after the death or incapacity of another co-lessee. This provision makes the distinction between this section that pertains to access to safe-deposit boxes leased in two or more names, and s. 655.935, F.S. and s. 733.6065, F.S., which also provide for when there is a co-lessee, and provide procedures for when a co-lessee of a safe-deposit box dies.

The co-lessee and any other person granted access to the safe-deposit box in s. 655.937, F.S., may make a written inventory of the box which will be conducted by the person making the request in the presence of one other person. Each person present shall verify the contents of the box by signing a copy of the inventory under penalties of perjury.

This bill also provides that if the person making the written inventory is not a surviving co-lessee, the other person may be a surviving co-lessee, an employee of the institution where the box is located, or an attorney licensed in Florida.

This bill amends s. 733.6065(1), F.S., of the probate code, to specify that the procedure for the initial opening of a safe-deposit box include safe-deposit boxes leased or co-leased by the decedent. Section 733.6065(2), F.S., is amended to provide that the right to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, and to receive items as provided for in s. 655.935, F.S., is separate from the rights provided for in 733.6065(1), F.S.

Section 655.935, F.S., s. 655.937, F.S., and s. 733.6065, F.S., all pertain to access to safe-deposit boxes, whether they are leased or co-leased, and procedures for when a lessee or co-lessee is a decedent. This bill revises these provisions found in the probate code and the banking laws by removing possible conflicts and providing conformity between the similar provisions.

C. SECTION DIRECTORY:

Section 1 amends 655.935, F.S., revising search procedure on death of lessee.

Section 2 amends 655.936, F.S., removing words "foreign" and "resident" from the statute.

Section 3 amends 655.937, F.S., revising access to safe-deposit boxes leased in two or more names.

Section 4 amends s. 732.2135, F.S., revising the time-period for when an election must be filed and for an election withdrawal.

Section 5 amends s. 732.402, F.S., revising the time-period when a person entitled to exempt property must file a petition for determination of exempt property.

Section 6 amends 733.212, F.S., revising what must be included in a notice of administration, and extending the deadlines for filing petitions objecting to the validity of the will, qualifications of the personal representative, the venue, or the jurisdiction of the court or other pleadings requesting relief in accordance with the Florida Probate rules.

Section 7 amends 733.6065, F.S., revising procedures for opening a safe-deposit box.

Section 8 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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. This bill increases the information required to be published in the notice of administration. The number of lines that the notice takes up on a page determines the cost to the estate. By increasing the amount of information in the notice, this bill adds to the length of the notice, and as a result, the cost of publication to the estate and heirs will likely increase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Civil Justice Committee adopted one amendment to this bill. The amendment revises the statutes that provide for access to safe-deposit boxes following the death of the lessor and creating an optional inventory by someone other than the personal representative if the safe-deposit box is co-leased. The bill was then reported favorably with a committee substitute.