

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

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

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24
25 Section 1. Section 655.935, Florida Statutes, is amended
26 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
32 personal representative in a copy of a purported will produced
33 by such person, to open and examine the contents of a safe-
34 deposit box leased or co-leased by a decedent, or any documents
35 delivered by a decedent for safekeeping, in the presence of an
36 officer of the lessor; and the lessor, if so requested by such
37 person, shall deliver:

38 (1) Any writing purporting to be a will of the decedent,
39 to the court having probate jurisdiction in the county in which
40 the financial institution is located.~~;~~

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

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

46
47 No other contents may be removed pursuant to this section.
48 Access granted pursuant to this section shall not be considered
49 the initial opening of the safe-deposit box pursuant to s.
50 733.6065 by a personal representative appointed by a court in
51 this state.

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

54 655.936 Delivery of safe-deposit box contents or property
55 held in safekeeping to personal representative.--

56 (1) Subject to the provisions of subsection (3), the
57 lessor shall immediately deliver to a ~~resident~~ personal
58 representative appointed by a court in this state, upon
59 presentation of a certified copy of his or her letters of
60 authority, all property deposited with it by the decedent for
61 safekeeping, and shall grant the ~~resident~~ personal
62 representative access to any safe-deposit box in the decedent's
63 name and permit him or her to remove from such box any part or
64 all of the contents thereof.

65 (2) If a ~~foreign~~ personal representative of a deceased
66 lessee has been appointed by a court of any other state, a
67 lessor may, at its discretion, after 3 months from the issuance
68 to such ~~foreign~~ personal representative of his or her letters of
69 authority, deliver to such ~~foreign~~ personal representative all
70 properties deposited with it for safekeeping and the contents of
71 any safe-deposit box in the name of the decedent if at such time
72 the lessor has not received written notice of the appointment of
73 a personal representative in this state, and such delivery is a
74 valid discharge of the lessor for all property or contents so
75 delivered. A ~~Such foreign~~ personal representative appointed by a
76 court of any other state shall furnish the lessor with an
77 affidavit setting forth facts showing the domicile of the
78 deceased lessee to be other than this state and stating that
79 there are no unpaid creditors of the deceased lessee in this

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80 state, together with a certified copy of his or her letters of
81 authority. A lessor making delivery pursuant to this subsection
82 shall maintain in its files a receipt executed by such ~~foreign~~
83 personal representative which itemizes in detail all property so
84 delivered.

85 Section 3. Section 655.937, Florida Statutes, is amended
86 to read:

87 655.937 Access to safe-deposit boxes leased in two or more
88 names.--

89 (1) Unless ~~When~~ specifically provided in the lease or
90 rental agreement to the contrary, when covering a safe-deposit
91 box is heretofore or hereafter rented or leased in the names of
92 two or more lessees, ~~that access to the safe deposit box will be~~
93 ~~granted to either lessee, or to either or the survivor,~~ access
94 to the safe-deposit box shall be granted to:

95 (a) Either or any of such lessees, regardless of whether
96 or not the other lessee or lessees or any of them are living or
97 competent.

98 (b) Subject to s. 655.933, those persons named in s.
99 655.933.

100 (c) Subject to s. 655.935, those persons named in s.
101 655.935.~~or~~

102 (d) ~~(b)~~ Subject to s. 733.6065, the personal representative
103 of the estate of either or any of such lessees who is deceased,
104 or the guardian of the property of either or any of such lessees
105 who is incapacitated. ~~and,~~

106 (2) In all cases described in subsection (1), ~~either such~~
107 ~~case, the provisions of s. 655.933 apply, and the signature on~~

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108 the safe-deposit entry or access record (or the receipt or
109 acquittance, in the case of property or documents otherwise held
110 for safekeeping) is a valid and sufficient release and discharge
111 to the lessor for granting access to such safe-deposit box or
112 for the delivery of such property or documents otherwise held
113 for safekeeping.

114 ~~(3)(2)~~ A lessor may not be held liable for damages or
115 penalty by reason of any access granted or delivery made
116 pursuant to this section.

117 (4) The right of access by a co-lessee is separate from
118 the rights and responsibilities of other persons who may be
119 granted access to a safe-deposit box after the death or
120 incapacity of another co-lessee and such right of access is not
121 subject to the provisions of s. 655.935, s. 733.6065, or other
122 requirements imposed upon personal representatives, guardians,
123 or other fiduciaries.

124 (5) After the death of a co-lessee, the surviving co-
125 lessee or any other person who is granted access to the safe-
126 deposit box pursuant to this section may make a written
127 inventory of the box which shall be conducted by the person
128 making the request in the presence of one other person as
129 specified in this subsection. Each person present shall verify
130 the contents of the box by signing a copy of the inventory under
131 penalties of perjury.

132 (a) If the person making the written inventory is a
133 surviving co-lessee, the other person may be any other person
134 granted access pursuant to this section, an employee of the

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135 institution at which the box is located, or an attorney licensed
136 in this state.

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

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

143 732.2135 Time of election; extensions; withdrawal.--

144 (1) Except as provided in subsection (2), the election
145 must be filed on or before ~~within~~ the earlier of the date that
146 is 6 months after ~~of~~ the date of service of a copy of the notice
147 of administration on the surviving spouse, or an attorney in
148 fact or guardian of the property of the surviving spouse, or the
149 date that is 2 years after the date of the decedent's death.

150 (3) The surviving spouse or an attorney in fact, guardian
151 of the property, or personal representative of the surviving
152 spouse may withdraw an election on or before the earlier of the
153 date that is ~~at any time within~~ 8 months after the date of the
154 decedent's death or the date of a court ~~and before the court's~~
155 order of contribution. If an election is withdrawn, the court
156 may assess attorney's fees and costs against the surviving
157 spouse or the surviving spouse's estate.

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

160 732.402 Exempt property.--

161 (6) Persons entitled to exempt property shall be deemed to
162 have waived their rights under this section unless a petition

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163 for determination of exempt property is filed by or on behalf of
 164 the persons entitled to the exempt property on or before the
 165 later of the date that is ~~within~~ 4 months after the date of
 166 service of the notice of administration or the date that is
 167 ~~within~~ 40 days after ~~from~~ the date of termination of any
 168 proceeding involving the construction, admission to probate, or
 169 validity of the will or involving any other matter affecting any
 170 part of the estate subject to this section.

171 Section 6. Section 733.212, Florida Statutes, is amended
 172 to read:

173 733.212 Notice of administration; filing of objections.--

174 (1) The personal representative shall promptly serve a
 175 copy of the notice of administration on the following persons
 176 who are known to the personal representative:

177 (a) The decedent's surviving spouse;

178 (b) Beneficiaries;

179 (c) The trustee of any trust described in s. 733.707(3)

180 and each beneficiary of the trust as defined in s.

181 737.303(4)(b), if each trustee is also a personal representative
 182 of the estate; and

183 (d) Persons who may be entitled to exempt property

184
 185 in the manner provided for service of formal notice, unless

186 served under s. 733.2123. The personal representative may

187 similarly serve a copy of the notice on any devisees under a

188 known prior will or heirs or others who claim or may claim an
 189 interest in the estate.

190 (2) The notice shall state:

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191 (a) The name of the decedent, the file number of the
 192 estate, the designation and address of the court in which the
 193 proceedings are pending, whether the estate is testate or
 194 intestate, and, if testate, the date of the will and any
 195 codicils.~~7~~

196 (b) The name and address of the personal representative,~~7~~
 197 and the name and address of the personal representative's
 198 attorney.

199 (c) ~~The notice shall state That~~ any interested person
 200 ~~persons are required to file with the court any objection by an~~
 201 ~~interested person on whom~~ a copy of the notice of administration
 202 is the notice was served must file on or before the date that is
 203 3 months after the date of service of a copy of the notice of
 204 administration on that person any objection that challenges the
 205 validity of the will, the qualifications of the personal
 206 representative, the venue, or the jurisdiction of the court
 207 ~~within 3 months after the date of service of a copy of the~~
 208 ~~notice of administration on the objecting person.~~

209 (d) That persons who may be entitled to exempt property
 210 under s. 732.402 will be deemed to have waived their rights to
 211 claim that property as exempt property unless a petition for
 212 determination of exempt property is filed by such persons or on
 213 their behalf on or before the later of the date that is 4 months
 214 after the date of service of a copy of the notice of
 215 administration on such persons or the date that is 40 days after
 216 the date of termination of any proceeding involving the
 217 construction, admission to probate, or validity of the will or

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218 involving any other matter affecting any part of the exempt
219 property.

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

226 (3) Any interested person on whom a copy of the notice of
227 administration is ~~was~~ served must object to the validity of the
228 will, the qualifications of the personal representative, the
229 venue, or the jurisdiction of the court by filing a petition or
230 other pleading requesting relief in accordance with the Florida
231 Probate Rules on or before the date that is ~~within~~ 3 months
232 after the date of service of a copy of the notice of
233 administration on the objecting person, or those objections are
234 forever barred.

235 (4) The appointment of a personal representative or a
236 successor personal representative shall not extend or renew the
237 period for filing objections under this section, unless a new
238 will or codicil is admitted.

239 (5)~~(4)~~ The personal representative is not individually
240 liable to any person for giving notice under this section,
241 regardless of whether it is later determined that notice was not
242 required by this section. The service of notice in accordance
243 with this section shall not be construed as conferring any
244 right.

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245 (6)~~(5)~~ If the personal representative in good faith fails
 246 to give notice required by this section, the personal
 247 representative is not liable to any person for the failure.
 248 Liability, if any, for the failure is on the estate.

249 (7)~~(6)~~ If a will or codicil is subsequently admitted to
 250 probate, the personal representative shall promptly serve a copy
 251 of a new notice of administration as required for an initial
 252 will admission.

253 (8) For the purpose of determining deadlines established
 254 by reference to the date of service of a copy of the notice of
 255 administration in cases in which such service has been waived,
 256 service shall be deemed to occur on the date the waiver is
 257 filed.

258 Section 7. Section 733.6065, Florida Statutes, is amended
 259 to read:

260 733.6065 Opening safe-deposit box.--

261 (1) Subject to the provisions of s. 655.936(2), the
 262 initial opening of a the decedent's safe-deposit box leased or
 263 co-leased by the decedent shall be conducted in the presence of
 264 any two of the following persons: an employee of the institution
 265 where the box is located, the personal representative, or the
 266 personal representative's attorney of record. Each person who is
 267 present must verify the contents of the box by signing a copy of
 268 the inventory under penalties of perjury. The personal
 269 representative shall file the safe-deposit box inventory,
 270 together with a copy of the box entry record from a date which
 271 is 6 months prior to the date of death to the date of inventory,
 272 with the court within 10 days after the box is opened. Unless

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273 otherwise ordered by the court, this inventory and the attached
274 box entry record is subject to inspection only by persons
275 entitled to inspect an inventory under s. 733.604(1). The
276 personal representative may remove the contents of the box.

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

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