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 HB 521, Engrossed 1

2006 Legislature

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

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 655.935, Florida Statutes, is amended
 22 to read:

23 655.935 Search procedure on death of lessee.--If
 24 satisfactory proof of the death of the lessee is presented, a
 25 lessor shall permit the person named in a court order for the
 26 purpose, or if no order has been served upon the lessor, the
 27 spouse, a parent, an adult descendant, or a person named as a

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28 | personal representative in a copy of a purported will produced
 29 | by such person, to open and examine the contents of a safe-
 30 | deposit box leased or co-leased by a decedent, or any documents
 31 | delivered by a decedent for safekeeping, in the presence of an
 32 | officer of the lessor; and the lessor, if so requested by such
 33 | person, shall deliver:

34 | (1) Any writing purporting to be a will of the decedent,
 35 | to the court having probate jurisdiction in the county in which
 36 | the financial institution is located.†

37 | (2) Any writing purporting to be a deed to a burial plot
 38 | or to give burial instructions, to the person making the request
 39 | for a search.† ~~and~~

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

42 |
 43 | No other contents may be removed pursuant to this section.
 44 | Access granted pursuant to this section shall not be considered
 45 | the initial opening of the safe-deposit box pursuant to s.
 46 | 733.6065 by a personal representative appointed by a court in
 47 | this state.

48 | Section 2. Subsections (1) and (2) of section 655.936,
 49 | Florida Statutes, are amended to read:

50 | 655.936 Delivery of safe-deposit box contents or property
 51 | held in safekeeping to personal representative.--

52 | (1) Subject to the provisions of subsection (3), the
 53 | lessor shall immediately deliver to a ~~resident~~ personal
 54 | representative appointed by a court in this state, upon

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55 presentation of a certified copy of his or her letters of
56 authority, all property deposited with it by the decedent for
57 safekeeping, and shall grant the ~~resident~~ personal
58 representative access to any safe-deposit box in the decedent's
59 name and permit him or her to remove from such box any part or
60 all of the contents thereof.

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

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81 Section 3. Section 655.937, Florida Statutes, is amended
 82 to read:

83 655.937 Access to safe-deposit boxes leased in two or more
 84 names.--

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

91 (a) Either or any of such lessees, regardless of whether
 92 or not the other lessee or lessees or any of them are living or
 93 competent.

94 (b) Subject to s. 655.933, those persons named in s.
 95 655.933.

96 (c) Subject to s. 655.935, those persons named in s.
 97 655.935.~~or~~

98 (d) ~~(b)~~ Subject to s. 733.6065, the personal representative
 99 of the estate of either or any of such lessees who is deceased,
 100 or the guardian of the property of either or any of such lessees
 101 who is incapacitated. ~~and,~~

102 (2) In all cases described in subsection (1), ~~either such~~
 103 ~~case, the provisions of s. 655.933 apply,~~ and the signature on
 104 the safe-deposit entry or access record (or the receipt or
 105 acquittance, in the case of property or documents otherwise held
 106 for safekeeping) is a valid and sufficient release and discharge
 107 to the lessor for granting access to such safe-deposit box or

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108 | for the delivery of such property or documents otherwise held
 109 | for safekeeping.

110 | ~~(3)-(2)~~ A lessor may not be held liable for damages or
 111 | penalty by reason of any access granted or delivery made
 112 | pursuant to this section.

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

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

128 | (a) If the person making the written inventory is a
 129 | surviving co-lessee, the other person may be any other person
 130 | granted access pursuant to this section, an employee of the
 131 | institution at which the box is located, or an attorney licensed
 132 | in this state.

133 | (b) If the person making the written inventory is not a
 134 | surviving co-lessee, the other person may be a surviving co-

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

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

139 | 732.2135 Time of election; extensions; withdrawal.--

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

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

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

156 | 732.402 Exempt property.--

157 | (6) Persons entitled to exempt property shall be deemed to
 158 | have waived their rights under this section unless a petition
 159 | for determination of exempt property is filed by or on behalf of
 160 | the persons entitled to the exempt property on or before the
 161 | later of the date that is within 4 months after the date of

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162 service of the notice of administration or the date that is
163 ~~within~~ 40 days after ~~from~~ the date of termination of any
164 proceeding involving the construction, admission to probate, or
165 validity of the will or involving any other matter affecting any
166 part of the estate subject to this section.

167 Section 6. Section 733.212, Florida Statutes, is amended
168 to read:

169 733.212 Notice of administration; filing of objections.--

170 (1) The personal representative shall promptly serve a
171 copy of the notice of administration on the following persons
172 who are known to the personal representative:

173 (a) The decedent's surviving spouse;

174 (b) Beneficiaries;

175 (c) The trustee of any trust described in s. 733.707(3)
176 and each beneficiary of the trust as defined in s.

177 737.303(4)(b), if each trustee is also a personal representative
178 of the estate; and

179 (d) Persons who may be entitled to exempt property
180

181 in the manner provided for service of formal notice, unless
182 served under s. 733.2123. The personal representative may
183 similarly serve a copy of the notice on any devisees under a
184 known prior will or heirs or others who claim or may claim an
185 interest in the estate.

186 (2) The notice shall state:

187 (a) The name of the decedent, the file number of the
188 estate, the designation and address of the court in which the

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189 proceedings are pending, whether the estate is testate or
 190 intestate, and, if testate, the date of the will and any
 191 codicils.

192 (b) The name and address of the personal representative,
 193 and the name and address of the personal representative's
 194 attorney.

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

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

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

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

231 (4) The appointment of a personal representative or a
 232 successor personal representative shall not extend or renew the
 233 period for filing objections under this section, unless a new
 234 will or codicil is admitted.

235 (5)~~(4)~~ The personal representative is not individually
 236 liable to any person for giving notice under this section,
 237 regardless of whether it is later determined that notice was not
 238 required by this section. The service of notice in accordance
 239 with this section shall not be construed as conferring any
 240 right.

241 (6)~~(5)~~ If the personal representative in good faith fails
 242 to give notice required by this section, the personal

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243 representative is not liable to any person for the failure.
244 Liability, if any, for the failure is on the estate.

245 (7)~~(6)~~ If a will or codicil is subsequently admitted to
246 probate, the personal representative shall promptly serve a copy
247 of a new notice of administration as required for an initial
248 will admission.

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

254 Section 7. Section 733.6065, Florida Statutes, is amended
255 to read:

256 733.6065 Opening safe-deposit box.--

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

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270 | box entry record is subject to inspection only by persons
271 | entitled to inspect an inventory under s. 733.604(1). The
272 | personal representative may remove the contents of the box.

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

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