

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Paragraph (d) of subsection (2) of section
4 222.21, Florida Statutes, is amended to read:

5 222.21 Exemption of pension money and certain
6 tax-exempt funds or accounts from legal processes.--

7 (2)

8 (d) Any fund or account described in paragraph (a) is
9 not exempt from the claims of an alternate payee under a
10 qualified domestic relations order or from the claims of a
11 surviving spouse pursuant to an order determining the amount
12 of elective share and contribution as provided in part II of
13 chapter 732. However, the interest of any alternate payee
14 under a qualified domestic relations order is exempt from all
15 claims of any creditor, other than the Department of Revenue,
16 of the alternate payee. As used in this paragraph, the terms
17 "alternate payee" and "qualified domestic relations order"
18 have the meanings ascribed to them in s. 414(p) of the
19 Internal Revenue Code of 1986.

20 Section 2. Subsection (3) is added to section 731.110,
21 Florida Statutes, to read:

22 731.110 Caveat; proceedings.--

23 (3) When a caveat has been filed by an interested
24 person other than a creditor, the court shall not admit a will
25 of the decedent to probate or appoint a personal
26 representative until service, as provided by the Florida
27 Probate Rules, has been accomplished.

28 Section 3. Subsections (6) and (7) and subsections (8)
29 through (37) of section 731.201, Florida Statutes, as amended
30 by section 29 of chapter 2006-217, Laws of Florida, are
31 renumbered as subsections (7) and (8) and subsections (10)

1 through (39), respectively, and new subsections (6) and (9)
2 are added to that section, to read:

3 731.201 General definitions.--Subject to additional
4 definitions in subsequent chapters that are applicable to
5 specific chapters or parts, and unless the context otherwise
6 requires, in this code, in s. 409.9101, and in chapters 736,
7 738, 739, and 744, the term:

8 (6) "Collateral heirs" means heirs who are descendants
9 of an ancestor, excluding the decedent's own descendants and
10 ancestors.

11 (9) "Descendant" means a person in any generational
12 level down the applicable individual's descending line and
13 includes children, grandchildren, and more remote descendants.
14 The term "descendant" is synonymous with the terms "lineal
15 descendant" and "issue" but excludes collateral heirs.

16 Section 4. Section 731.401, Florida Statutes, is
17 created to read:

18 731.401 Arbitration of disputes.--

19 (1) A provision in a will or trust requiring the
20 arbitration of disputes, other than disputes of the validity
21 of all or a part of a will or trust, between or among the
22 beneficiaries and a fiduciary under the will or trust, or any
23 combination of such persons or entities, is enforceable.

24 (2) Unless otherwise specified in the will or trust, a
25 will or trust provision requiring arbitration shall be
26 presumed to require binding arbitration under s. 44.104.

27 Section 5. Section 732.102, Florida Statutes, is
28 amended to read:

29 732.102 Spouse's share of intestate estate.--The
30 intestate share of the surviving spouse is:

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1 (1) If there is no surviving ~~lineal~~ descendant of the
2 decedent, the entire intestate estate.

3 (2) If there are surviving ~~lineal~~ descendants of the
4 decedent, all of whom are also lineal descendants of the
5 surviving spouse, the first \$60,000 of the intestate estate,
6 plus one-half of the balance of the intestate estate. Property
7 allocated to the surviving spouse to satisfy the \$60,000 shall
8 be valued at the fair market value on the date of
9 distribution.

10 (3) If there are surviving ~~lineal~~ descendants, one or
11 more of whom are not lineal descendants of the surviving
12 spouse, one-half of the intestate estate.

13 Section 6. Subsections (1), (2), and (6) of section
14 732.103, Florida Statutes, are amended to read:

15 732.103 Share of other heirs.--The part of the
16 intestate estate not passing to the surviving spouse under s.
17 732.102, or the entire intestate estate if there is no
18 surviving spouse, descends as follows:

19 (1) To the ~~lineal~~ descendants of the decedent.

20 (2) If there is no ~~lineal~~ descendant, to the
21 decedent's father and mother equally, or to the survivor of
22 them.

23 (6) If none of the foregoing, and if any of the
24 descendants of the decedent's great-grandparents were
25 Holocaust victims as defined in s. 626.9543(3)(a), including
26 such victims in countries cooperating with the discriminatory
27 policies of Nazi Germany, then to the ~~lineal~~ descendants of
28 the great-grandparents. The court shall allow any such
29 descendant to meet a reasonable, not unduly restrictive,
30 standard of proof to substantiate his or her lineage. This
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1 subsection only applies to escheated property and shall cease
2 to be effective for proceedings filed after December 31, 2004.

3 Section 7. Section 732.104, Florida Statutes, is
4 amended to read:

5 732.104 Inheritance per stirpes.--Descent shall be per
6 stirpes, whether to ~~lineal~~ descendants or to collateral heirs.

7 Section 8. Section 732.108, Florida Statutes, is
8 amended to read:

9 732.108 Adopted persons and persons born out of
10 wedlock.--

11 (1) For the purpose of intestate succession by or from
12 an adopted person, the adopted person is a ~~lineal~~ descendant
13 of the adopting parent and is one of the natural kindred of
14 all members of the adopting parent's family, and is not a
15 ~~lineal~~ descendant of his or her natural parents, nor is he or
16 she one of the kindred of any member of the natural parent's
17 family or any prior adoptive parent's family, except that:

18 (a) Adoption of a child by the spouse of a natural
19 parent has no effect on the relationship between the child and
20 the natural parent or the natural parent's family.

21 (b) Adoption of a child by a natural parent's spouse
22 who married the natural parent after the death of the other
23 natural parent has no effect on the relationship between the
24 child and the family of the deceased natural parent.

25 (c) Adoption of a child by a close relative, as
26 defined in s. 63.172(2), has no effect on the relationship
27 between the child and the families of the deceased natural
28 parents.

29 (2) For the purpose of intestate succession in cases
30 not covered by subsection (1), a person born out of wedlock is
31 a ~~lineal~~ descendant of his or her mother and is one of the

1 natural kindred of all members of the mother's family. The
2 person is also a ~~lineal~~ descendant of his or her father and is
3 one of the natural kindred of all members of the father's
4 family, if:

5 (a) The natural parents participated in a marriage
6 ceremony before or after the birth of the person born out of
7 wedlock, even though the attempted marriage is void.

8 (b) The paternity of the father is established by an
9 adjudication before or after the death of the father.

10 (c) The paternity of the father is acknowledged in
11 writing by the father.

12 Section 9. Subsection (2) of section 732.2025, Florida
13 Statutes, is amended to read:

14 732.2025 Definitions.--As used in ss.
15 732.2025-732.2155, the term:

16 (2) "Elective share trust" means a trust under which
17 ~~where~~:

18 (a) The surviving spouse is entitled for life to the
19 use of the property or to all of the income payable at least
20 as often as annually;

21 (b) ~~The trust is subject to the provisions of former~~
22 ~~s. 738.12 or the~~ surviving spouse has the right under the
23 terms of the trust or state law to require the trustee either
24 to make the property productive or to convert it within a
25 reasonable time; and

26 (c) During the spouse's life, no person other than the
27 spouse has the power to distribute income or principal to
28 anyone other than the spouse.

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1 As used in this subsection, the term "income" has the same
2 meaning as that provided in s. 643(b) of the Internal Revenue
3 Code, as amended, and regulations adopted under that section.

4 Section 10. Paragraph (b) of subsection (8) of section
5 732.2035, Florida Statutes, is amended to read:

6 732.2035 Property entering into elective
7 estate.--Except as provided in s. 732.2045, the elective
8 estate consists of the sum of the values as determined under
9 s. 732.2055 of the following property interests:

10 (8) Property that was transferred during the 1-year
11 period preceding the decedent's death as a result of a
12 transfer by the decedent if the transfer was either of the
13 following types:

14 (b) Any transfer of property to the extent not
15 otherwise included in the elective estate, made to or for the
16 benefit of any person, except:

17 1. Any transfer of property for medical or educational
18 expenses to the extent it qualifies for exclusion from the
19 United States gift tax under s. 2503(e) of the Internal
20 Revenue Code, as amended; and

21 2. After the application of subparagraph (b)1., the
22 first ~~annual exclusion amount~~\$10,000 of property transferred
23 to or for the benefit of each donee during the 1-year period,
24 but only to the extent the transfer qualifies for exclusion
25 from the United States gift tax under s. 2503(b) or (c) of the
26 Internal Revenue Code, as amended. For purposes of this
27 subparagraph, the term "annual exclusion amount" means the
28 amount of one annual exclusion under s. 2503(b) or s. 2503(c)
29 of the Internal Revenue Code, as amended.

30 Section 11. Subsection (2) of section 732.2075,
31 Florida Statutes, is amended to read:

1 732.2075 Sources from which elective share payable;
2 abatement.--

3 (2) If, after the application of subsection (1), the
4 elective share is not fully satisfied, the unsatisfied balance
5 shall be apportioned among the direct recipients of the
6 remaining elective estate in the following order of priority:

7 (a) Class 1.--The decedent's probate estate and
8 revocable trusts.

9 (b) Class 2.--Recipients of property interests, other
10 than protected charitable interests, included in the elective
11 estate under s. 732.2035(2), (3), or (6) and, to the extent
12 the decedent had at the time of death the power to designate
13 the recipient of the property, property interests, other than
14 protected charitable interests, included under s. 732.2035(5)
15 and (7).

16 (c) Class 3.--Recipients of all other property
17 interests, other than protected charitable interests, included
18 in the elective estate.

19 (d) Class 4.--Recipients of protected charitable lead
20 interests, but only to the extent and at such times that
21 contribution is permitted without disqualifying the charitable
22 interest in that property for a deduction under the United
23 States gift tax laws.

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25 For purposes of this subsection, a protected charitable
26 interest is any interest for which a charitable deduction with
27 respect to the transfer of the property was allowed or
28 allowable to the decedent or the decedent's spouse under the
29 United States gift or income tax laws. A protected charitable
30 lead interest is a protected charitable interest where one or
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1 more deductible interests in charity precede some other
2 nondeductible interest or interests in the property.

3 Section 12. Subsection (1) of section 732.401, Florida
4 Statutes, is amended to read:

5 732.401 Descent of homestead.--

6 (1) If not devised as permitted by law and the Florida
7 Constitution, the homestead shall descend in the same manner
8 as other intestate property; but if the decedent is survived
9 by a spouse and one or more ~~lineal~~ descendants, the surviving
10 spouse shall take a life estate in the homestead, with a
11 vested remainder to the ~~lineal~~ descendants in being at the
12 time of the decedent's death per stirpes.

13 Section 13. Subsection (1) of section 732.4015,
14 Florida Statutes, is amended to read:

15 732.4015 Devise of homestead.--

16 (1) As provided by the Florida Constitution, the
17 homestead shall not be subject to devise if the owner is
18 survived by a spouse or a minor child or minor children,
19 except that the homestead may be devised to the owner's spouse
20 if there is no minor child or minor children.

21 Section 14. Subsection (1) of section 732.507, Florida
22 Statutes, is amended to read:

23 732.507 Effect of subsequent marriage, birth,
24 adoption, or dissolution of marriage.--

25 (1) Neither subsequent marriage, birth, nor adoption
26 of ~~lineal~~ descendants shall revoke the prior will of any
27 person, but the pretermitted child or spouse shall inherit as
28 set forth in ss. 732.301 and 732.302, regardless of the prior
29 will.

30 Section 15. Section 733.620, Florida Statutes, is
31 created to read:

1 733.620 Exculpation of personal representative.--

2 (1) A term of a will relieving a personal
3 representative of liability to a beneficiary for breach of
4 fiduciary duty is unenforceable to the extent that the term:

5 (a) Relieves the personal representative of liability
6 for breach of fiduciary duty committed in bad faith or with
7 reckless indifference to the purposes of the will or the
8 interests of interested persons; or

9 (b) Was inserted into the will as the result of an
10 abuse by the personal representative of a fiduciary or
11 confidential relationship with the testator.

12 (2) An exculpatory term drafted or caused to be
13 drafted by the personal representative is invalid as an abuse
14 of a fiduciary or confidential relationship unless:

15 (a) The personal representative proves that the
16 exculpatory term is fair under the circumstances.

17 (b) The term's existence and contents were adequately
18 communicated directly to the testator.

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20 This subsection applies only to wills created on or after July
21 1, 2007.

22 Section 16. Subsections (3) and (4) of section
23 734.101, Florida Statutes, are amended to read:

24 734.101 Foreign personal representative.--

25 (3) Debtors who have not received a written demand for
26 payment from a personal representative or curator appointed in
27 this state within 90 ~~60~~ days after appointment of a personal
28 representative in any other state or country, and whose
29 property in Florida is subject to a mortgage or other lien
30 securing the debt held by the foreign personal representative,
31 may pay the foreign personal representative after the

1 expiration of 90 ~~60~~ days from the date of appointment of the
2 foreign personal representative. Thereafter, a satisfaction of
3 the mortgage or lien executed by the foreign personal
4 representative, with an authenticated copy of the letters or
5 other evidence of authority attached, may be recorded in the
6 public records. The satisfaction shall be an effective
7 discharge of the mortgage or lien, irrespective of whether the
8 debtor making payment had received a written demand before
9 paying the debt.

10 (4) Except as provided in s. 655.936, all persons
11 indebted to the estate of a decedent, or having possession of
12 personal property belonging to the estate, who have received
13 no written demand from a personal representative or curator
14 appointed in this state for payment of the debt or the
15 delivery of the property are authorized to pay the debt or to
16 deliver the personal property to the foreign personal
17 representative after the expiration of 90 ~~60~~ days from the
18 date of appointment of the foreign personal representative.

19 Section 17. Subsection (10) of section 895.02, Florida
20 Statutes, is amended to read:

21 895.02 Definitions.--As used in ss. 895.01-895.08, the
22 term:

23 (10) "Trustee" means any of the following:

24 (a) Any person acting as trustee pursuant to a trust
25 established under s. 689.07 or s. 689.071 in which the trustee
26 holds legal or record title to real property.

27 (b) Any person who holds legal or record title to real
28 property in which any other person has a beneficial interest.

29 (c) Any successor trustee or trustees to any or all of
30 the foregoing persons.

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1 | However, the term "trustee" does not include any person
2 | appointed or acting as a personal representative as defined in
3 | s. 731.201(27)(~~25~~) or appointed or acting as a trustee of any
4 | testamentary trust or as a trustee of any indenture of trust
5 | under which any bonds have been or are to be issued.

6 | Section 18. This act shall take effect July 1, 2007.
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