



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

2

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 the petition for administration has been  
27 served on the caveator or the caveator's designated agent by  
28 formal notice and the caveator has had the opportunity to  
29 participate in proceedings on the petition, as provided by the  
30 Florida Probate Rules.

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1           Section 3. Subsections (6) and (7) and subsections (8)  
2 through (37) of section 731.201, Florida Statutes, as amended  
3 by section 29 of chapter 2006-217, Laws of Florida, are  
4 renumbered as subsections (7) and (8) and subsections (10)  
5 through (39), respectively, and new subsections (6) and (9)  
6 are added to that section, to read:

7           731.201 General definitions.--Subject to additional  
8 definitions in subsequent chapters that are applicable to  
9 specific chapters or parts, and unless the context otherwise  
10 requires, in this code, in s. 409.9101, and in chapters 736,  
11 738, 739, and 744, the term:

12           (6) "Collateral heir" means an heir who is related to  
13 the decedent through a common ancestor but who is not an  
14 ancestor or descendant of the decedent.

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

20           Section 4. Section 731.401, Florida Statutes, is  
21 created to read:

22           731.401 Arbitration of disputes.--

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

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

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1           Section 5. Section 732.102, Florida Statutes, is  
2 amended to read:

3           732.102 Spouse's share of intestate estate.--The  
4 intestate share of the surviving spouse is:

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

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

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

17           Section 6. Subsections (1), (2), and (6) of section  
18 732.103, Florida Statutes, are amended to read:

19           732.103 Share of other heirs.--The part of the  
20 intestate estate not passing to the surviving spouse under s.  
21 732.102, or the entire intestate estate if there is no  
22 surviving spouse, descends as follows:

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

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

27           (6) If none of the foregoing, and if any of the  
28 descendants of the decedent's great-grandparents were  
29 Holocaust victims as defined in s. 626.9543(3)(a), including  
30 such victims in countries cooperating with the discriminatory  
31 policies of Nazi Germany, then to the ~~lineal~~ descendants of

1 | the great-grandparents. The court shall allow any such  
2 | descendant to meet a reasonable, not unduly restrictive,  
3 | standard of proof to substantiate his or her lineage. This  
4 | subsection only applies to escheated property and shall cease  
5 | to be effective for proceedings filed after December 31, 2004.

6 |         Section 7. Section 732.104, Florida Statutes, is  
7 | amended to read:

8 |             732.104 Inheritance per stirpes.--Descent shall be per  
9 | stirpes, whether to ~~lineal~~ descendants or to collateral heirs.

10 |         Section 8. Section 732.108, Florida Statutes, is  
11 | amended to read:

12 |             732.108 Adopted persons and persons born out of  
13 | wedlock.--

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

21 |             (a) Adoption of a child by the spouse of a natural  
22 | parent has no effect on the relationship between the child and  
23 | the natural parent or the natural parent's family.

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

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

1           (2) For the purpose of intestate succession in cases  
2 not covered by subsection (1), a person born out of wedlock is  
3 a ~~lineal~~ descendant of his or her mother and is one of the  
4 natural kindred of all members of the mother's family. The  
5 person is also a ~~lineal~~ descendant of his or her father and is  
6 one of the natural kindred of all members of the father's  
7 family, if:

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

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

13           (c) The paternity of the father is acknowledged in  
14 writing by the father.

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

17           732.2025 Definitions.--As used in ss.  
18 732.2025-732.2155, the term:

19           (2) "Elective share trust" means a trust under which  
20 ~~where~~:

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

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

29           (c) During the spouse's life, no person other than the  
30 spouse has the power to distribute income or principal to  
31 anyone other than the spouse.

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

5 Section 10. Paragraph (b) of subsection (8) of section  
6 732.2035, Florida Statutes, is amended to read:

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

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

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

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

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

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

3           732.2075 Sources from which elective share payable;  
4 abatement.--

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

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

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

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

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

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27 For purposes of this subsection, a protected charitable  
28 interest is any interest for which a charitable deduction with  
29 respect to the transfer of the property was allowed or  
30 allowable to the decedent or the decedent's spouse under the  
31 United States gift or income tax laws. A protected charitable



1 | lead interest is a protected charitable interest where one or  
2 | more deductible interests in charity precede some other  
3 | nondeductible interest or interests in the property.

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

6 |           732.401 Descent of homestead.--

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

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

16 |           732.4015 Devise of homestead.--

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

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

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

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

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1           Section 15. Section 733.620, Florida Statutes, is  
2 created to read:

3           733.620 Exculpation of personal representative.--

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

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

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

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

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

19           (b) The term's existence and contents were adequately  
20 communicated directly to the testator or the independent  
21 attorney of the testator. This paragraph applies only to wills  
22 created on or after July 1, 2007.

23           Section 16. Subsections (3) and (4) of section  
24 734.101, Florida Statutes, are amended to read:

25           734.101 Foreign personal representative.--

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

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

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

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

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

24 |       (10) "Trustee" means any of the following:

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

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

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

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

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

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1936

The committee substitute differs from the underlying bill in that it:

- clarifies that a petition for administration is what must be served on a caveator or the agent of a caveator;
- makes technical changes to the definition of the term "collateral heir"; and
- validates certain limitations on a personal representative's liability contained in a will if the limitation was communicated to the testator's attorney.