

1 A bill to be entitled
2 An act relating to administration of estates; amending s.
3 731.201, F.S.; revising definitions; amending s. 732.108,
4 F.S.; providing for nonapplication of certain limitations
5 of actions provisions to certain paternity determinations;
6 amending s. 732.2025, F.S.; revising a definition;
7 amending s. 732.2045, F.S.; expanding an exclusion from
8 application of certain provisions of law; amending s.
9 732.2075, F.S.; revising provisions for satisfaction of an
10 elective share; providing additional requirements;
11 amending s. 732.2085, F.S.; correcting a cross-reference;
12 amending s. 732.2135, F.S.; revising criteria for time of
13 an election; providing for award of attorney fees and
14 costs for elections made in bad faith; amending s.
15 732.402, F.S.; revising criteria for certain household
16 items, motor vehicles, and tuition programs as exempt
17 property; amending s. 733.201, F.S.; revising a criterion
18 for proof of wills to conform; amending s. 733.504, F.S.;
19 revising a criterion for removal of a personal
20 representative to conform; amending s. 733.602, F.S.;
21 removing a cross-reference; amending s. 735.203, F.S.;
22 revising requirements for a petition for summary
23 administration; amending s. 739.102, F.S.; revising a
24 definition; amending s. 739.104, F.S.; excluding from
25 court approval certain disclaimers of interests in
26 property; amending s. 739.201, F.S.; providing an
27 additional rule applicable to disclaimers of interests in
28 property ;amending s. 739.207, F.S.; limiting a criterion

29 | for effectiveness of a disclaimer of power held in a
 30 | fiduciary capacity; amending s. 739.402, F.S.; correcting
 31 | terminology; amending s. 739.501, F.S.; preserving
 32 | application of certain provisions to effectiveness of
 33 | certain disclaimers or transfers; amending ss. 660.417,
 34 | 736.0802, and 895.02, F.S.; correcting cross-references to
 35 | conform; providing an effective date.
 36 |

37 | Be It Enacted by the Legislature of the State of Florida:
 38 |

39 | Section 1. Subsection (21) of section 731.201, Florida
 40 | Statutes, is amended, subsections (25) through (39) of that
 41 | section are renumbered as subsections (26) through (40),
 42 | respectively, and a new subsection (25) is added to that
 43 | section, to read:

44 | 731.201 General definitions.--Subject to additional
 45 | definitions in subsequent chapters that are applicable to
 46 | specific chapters or parts, and unless the context otherwise
 47 | requires, in this code, in s. 409.9101, and in chapters 736,
 48 | 738, 739, and 744, the term:

49 | (21) "Incapacitated" ~~"Incompetent"~~ means a judicial
 50 | determination that a person lacks the capacity to manage at
 51 | least some of the person's property or to meet at least some of
 52 | the person's essential health and safety requirements. A minor
 53 | shall be treated as being incapacitated ~~or a person adjudicated~~
 54 | ~~incompetent.~~

55 | (25) "Minor" means a person under 18 years of age whose
 56 | disabilities have not been removed by marriage or otherwise.

57 Section 2. Paragraph (b) of subsection (2) of section
 58 732.108, Florida Statutes, is amended to read:

59 732.108 Adopted persons and persons born out of wedlock.--

60 (2) For the purpose of intestate succession in cases not
 61 covered by subsection (1), a person born out of wedlock is a
 62 descendant of his or her mother and is one of the natural
 63 kindred of all members of the mother's family. The person is
 64 also a descendant of his or her father and is one of the natural
 65 kindred of all members of the father's family, if:

66 (b) The paternity of the father is established by an
 67 adjudication before or after the death of the father. Chapter 95
 68 shall not apply in determining heirs in a probate proceeding
 69 under this paragraph.

70 Section 3. Subsection (10) of section 732.2025, Florida
 71 Statutes, is amended to read:

72 732.2025 Definitions.--As used in ss. 732.2025-732.2155,
 73 the term:

74 (10) "Transfer in satisfaction of the elective share"
 75 means an irrevocable transfer by the decedent during life to an
 76 elective share trust.

77 Section 4. Paragraph (f) of subsection (1) of section
 78 732.2045, Florida Statutes, is amended to read:

79 732.2045 Exclusions and overlapping application.--

80 (1) EXCLUSIONS.--Section 732.2035 does not apply to:

81 (f) The decedent's one-half of the property to which ss.
 82 732.216-732.228, or any similar provisions of law of another
 83 state, apply and real property that is community property under
 84 the laws of the jurisdiction where it is located.

85 Section 5. Section 732.2075, Florida Statutes, is amended
 86 to read:

87 732.2075 Sources from which elective share payable;
 88 abatement.--

89 (1) Unless otherwise provided in the decedent's will or,
 90 in the absence of a provision in the decedent's will, in a trust
 91 referred to in the decedent's will, the following are applied
 92 first to satisfy the elective share:

93 (a) Property interests included in the elective estate
 94 that pass or have passed to or for the benefit of the surviving
 95 spouse, including interests that are contingent upon making the
 96 election, but only to the extent that such contingent interests
 97 do not diminish other property interests that would be applied
 98 to satisfy the elective share in the absence of the contingent
 99 interests. ~~To the extent paid to or for the benefit of the~~
 100 ~~surviving spouse, the proceeds of any term or other policy of~~
 101 ~~insurance on the decedent's life if, at the time of decedent's~~
 102 ~~death, the policy was owned by any person other than the~~
 103 ~~surviving spouse.~~

104 (b) To the extent paid to or for the benefit of the
 105 surviving spouse, amounts payable under any plan or arrangement
 106 described in s. 732.2035(7).

107 (c) To the extent paid to or for the benefit of the
 108 surviving spouse, the decedent's one-half of any property
 109 described in s. 732.2045(1)(f).

110 (d) To the extent paid to or for the benefit of the
 111 surviving spouse, the proceeds of any term or other policy of
 112 insurance on the decedent's life if, at the time of decedent's

113 death, the policy was owned by any person other than the
114 surviving spouse.

115 ~~(e)-(d)~~ Property held for the benefit of the surviving
116 spouse in a qualifying special needs trust.

117 ~~(e) Property interests included in the elective estate~~
118 ~~that pass or have passed to or for the benefit of the surviving~~
119 ~~spouse, including interests that are contingent upon making the~~
120 ~~election, but only to the extent that such contingent interests~~
121 ~~do not diminish other property interests that would be applied~~
122 ~~to satisfy the elective share in the absence of the contingent~~
123 ~~interests.~~

124 (f) Property interests that would have satisfied the
125 elective share under any preceding paragraph of this subsection
126 but were disclaimed.

127 (2) If, after the application of subsection (1), the
128 elective share is not fully satisfied, the unsatisfied balance
129 shall be allocated entirely to one class of ~~apportioned among~~
130 ~~the~~ direct recipients of the remaining elective estate and
131 apportioned among those recipients, and if the elective share
132 amount is not fully satisfied, to the next class of direct
133 recipients, in the following order of priority, until the
134 elective share amount is satisfied:

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

137 (b) Class 2.--Recipients of property interests, other than
138 protected charitable interests, included in the elective estate
139 under s. 732.2035(2), (3), or (6) and, to the extent the
140 decedent had at the time of death the power to designate the

141 recipient of the property, property interests, other than
 142 protected charitable interests, included under s. 732.2035(5)
 143 and (7).

144 (c) Class 3.--Recipients of all other property interests,
 145 other than protected charitable interests, included in the
 146 elective estate.

147 ~~(d) Class 4.--Recipients of protected charitable lead~~
 148 ~~interests, but only to the extent and at such times that~~
 149 ~~contribution is permitted without disqualifying the charitable~~
 150 ~~interest in that property for a deduction under the United~~
 151 ~~States gift tax laws.~~

152
 153 For purposes of this subsection, a protected charitable interest
 154 is any interest for which a charitable deduction with respect to
 155 the transfer of the property was allowed or allowable to the
 156 decedent or the decedent's spouse under the United States gift
 157 or income tax laws. ~~A protected charitable lead interest is a~~
 158 ~~protected charitable interest where one or more deductible~~
 159 ~~interests in charity precede some other nondeductible interest~~
 160 ~~or interests in the property.~~

161 (3) If, after the application of subsections (1) and (2),
 162 the elective share amount is not fully satisfied, the additional
 163 amount due to the surviving spouse shall be determined and
 164 satisfied as follows:

165 (a) The remaining unsatisfied balance shall be satisfied
 166 from property described in paragraphs (1) (a) and (b) which
 167 passes or which has passed in a trust in which the surviving
 168 spouse has a beneficial interest, other than an elective share

169 trust or a qualified special needs trust.

170 (b) In determining the amount of the remaining unsatisfied
 171 balance, the effect, if any, of any change caused by the
 172 operation of this subsection in the value of the spouse's
 173 beneficial interests in property described in paragraphs (1) (a)
 174 and (b) shall be taken into account, including, if necessary,
 175 further recalculations of the value of those beneficial
 176 interests.

177 (c) If there is more than one trust to which this
 178 subsection could apply, unless otherwise provided in the
 179 decedent's will or, in the absence of a provision in the
 180 decedent's will, in a trust referred to in the decedent's will,
 181 the unsatisfied balance shall be apportioned pro rata to all
 182 such trusts in proportion to the value, as determined under s.
 183 732.2095(2) (d), of the surviving spouse's beneficial interests
 184 in the trusts.

185 (4) If, after the application of subsections (1), (2), and
 186 (3), the elective share is not fully satisfied, any remaining
 187 unsatisfied balance shall be satisfied from direct recipients of
 188 protected charitable lead interests, but only to the extent and
 189 at such times that contribution is permitted without
 190 disqualifying the charitable interest in that property for a
 191 deduction under the United States gift tax laws. For purposes of
 192 this subsection, a protected charitable lead interest is a
 193 protected charitable interest as defined in subsection (2) in
 194 which one or more deductible interests in charity precede some
 195 other nondeductible interest or interests in the property.

196 (5)~~(3)~~ The contribution required of the decedent's probate
 197 estate and revocable trusts may be made in cash or in kind. In
 198 the application of this subsection, subsections (6) ~~(4)~~ and (7)
 199 ~~(5)~~ are to be applied to charge contribution for the elective
 200 share to the beneficiaries of the probate estate and revocable
 201 trusts as if all beneficiaries were taking under a common
 202 governing instrument.

203 (6)~~(4)~~ Unless otherwise provided in the decedent's will
 204 or, in the absence of a provision in the decedent's will, in a
 205 trust referred to in the decedent's will, any amount to be
 206 satisfied from the decedent's probate estate, other than from
 207 property passing to an inter vivos trust, shall be paid from the
 208 assets of the probate estate in the order prescribed in s.
 209 733.805.

210 (7)~~(5)~~ Unless otherwise provided in the trust instrument
 211 or, in the decedent's will if there is no provision in the trust
 212 instrument, any amount to be satisfied from trust property shall
 213 be paid from the assets of the trust in the order provided for
 214 claims under s. 736.05053(2) and (3). A direction in the
 215 decedent's will is effective only for revocable trusts.

216 Section 6. Paragraph (a) of subsection (1) of section
 217 732.2085, Florida Statutes, is amended to read:

218 732.2085 Liability of direct recipients and
 219 beneficiaries.--

220 (1) Only direct recipients of property included in the
 221 elective estate and the beneficiaries of the decedent's probate
 222 estate or of any trust that is a direct recipient, are liable to
 223 contribute toward satisfaction of the elective share.

224 (a) Within each of the classes described in s.
 225 732.2075(2) (b) and, (c) ~~and~~ (d), each direct recipient is
 226 liable in an amount equal to the value, as determined under s.
 227 732.2055, of the proportional part of the liability for all
 228 members of the class.

229 Section 7. Subsection (3) of section 732.2135, Florida
 230 Statutes, is amended, and subsection (5) is added to that
 231 section, to read:

232 732.2135 Time of election; extensions; withdrawal.--

233 (3) The surviving spouse or an attorney in fact, guardian
 234 of the property, or personal representative of the surviving
 235 spouse may withdraw an election at any time within ~~on or before~~
 236 ~~the earlier of the date that is 8 months after the date of the~~
 237 ~~decedent's death~~ and before the court's ~~or the date of a court~~
 238 ~~order of contribution. If an election is withdrawn, the court~~
 239 ~~may assess attorney's fees and costs against the surviving~~
 240 ~~spouse or the surviving spouse's estate.~~

241 (5) If the court determines that an election is made or
 242 pursued in bad faith, the court may assess attorney's fees and
 243 costs against the surviving spouse or the surviving spouse's
 244 estate.

245 Section 8. Subsection (2) of section 732.402, Florida
 246 Statutes, is amended to read:

247 732.402 Exempt property.--

248 (2) Exempt property shall consist of:

249 (a) Household furniture, furnishings, and appliances in
 250 the decedent's usual place of abode up to a net value of \$20,000
 251 ~~\$10,000~~ as of the date of death.

252 (b) Two motor vehicles as defined in s. 316.003(21), which
 253 do not, individually as to either such motor vehicle, have a
 254 gross vehicle weight in excess of 15,000 pounds, ~~All automobiles~~
 255 held in the decedent's name and regularly used by the decedent
 256 or members of the decedent's immediate family as their personal
 257 motor vehicles ~~automobiles~~.

258 (c) All qualified tuition programs authorized by s. 529 of
 259 the Internal Revenue Code of 1986, as amended, including, but
 260 not limited to, the Florida Prepaid College Trust Fund advance
 261 payment contracts under s. 1009.98 and the Florida Prepaid
 262 College Trust Fund participation agreements under s. 1009.981
 263 ~~Stanley G. Tate Florida Prepaid College Program contracts~~
 264 ~~purchased and Florida College Savings agreements established~~
 265 ~~under part IV of chapter 1009.~~

266 (d) All benefits paid pursuant to s. 112.1915.
 267 Section 9. Subsection (3) of section 733.201, Florida
 268 Statutes, is amended to read:

269 733.201 Proof of wills.--

270 (3) If it appears to the court that the attesting
 271 witnesses cannot be found or that they have become incapacitated
 272 ~~incompetent~~ after the execution of the will or their testimony
 273 cannot be obtained within a reasonable time, a will may be
 274 admitted to probate upon the oath of the personal representative
 275 nominated by the will as provided in subsection (2), whether or
 276 not the nominated personal representative is interested in the
 277 estate, or upon the oath of any person having no interest in the
 278 estate under the will stating that the person believes the
 279 writing exhibited to be the true last will of the decedent.

280 Section 10. Subsection (1) of section 733.504, Florida
 281 Statutes, is amended to read:

282 733.504 Removal of personal representative; causes for
 283 removal.--A personal representative may be removed and the
 284 letters revoked for any of the following causes, and the removal
 285 shall be in addition to any penalties prescribed by law:

286 (1) Adjudication that the personal representative is
 287 incapacitated ~~of incompetency~~.

288 Section 11. Subsection (1) of section 733.602, Florida
 289 Statutes, is amended to read:

290 733.602 General duties.--

291 (1) A personal representative is a fiduciary who shall
 292 observe the standards of care applicable to trustees ~~as~~
 293 ~~described by part VII of chapter 736~~. A personal representative
 294 is under a duty to settle and distribute the estate of the
 295 decedent in accordance with the terms of the decedent's will and
 296 this code as expeditiously and efficiently as is consistent with
 297 the best interests of the estate. A personal representative
 298 shall use the authority conferred by this code, the authority in
 299 the will, if any, and the authority of any order of the court,
 300 for the best interests of interested persons, including
 301 creditors.

302 Section 12. Section 735.203, Florida Statutes, is amended
 303 to read:

304 735.203 Petition for summary administration.--

305 (1) A petition for summary administration may be filed by
 306 any beneficiary or person nominated as personal representative
 307 in the decedent's will offered for probate. The petition must be

308 signed and verified by the surviving spouse, if any, and any
 309 beneficiaries except that the joinder in a petition for summary
 310 administration is not required of a beneficiary who will receive
 311 full distributive share under the proposed distribution. Any
 312 beneficiary not joining shall be served by formal notice with
 313 the petition.

314 (2) If a person named in subsection (1) has died, is
 315 incapacitated, or is a minor, or has conveyed or transferred all
 316 interest in the property of the estate, then, as to that person,
 317 the petition must be signed and verified ~~eertified~~ by:

318 (a) The personal representative, if any, of a deceased
 319 person or, if none, the surviving spouse, if any, and the
 320 beneficiaries;

321 (b) The guardian of an incapacitated person or a minor; or

322 (c) The grantee or transferee of any of them shall be
 323 authorized to sign and verify the petition instead of the
 324 beneficiary or surviving spouse.

325 (3) If each trustee of a trust that is a beneficiary of
 326 the estate of the deceased person is also a petitioner, each
 327 qualified beneficiary of the trust as defined in s. 736.0103
 328 shall be served by formal notice with the petition for summary
 329 administration unless joinder in, or consent to, the petition is
 330 obtained from each qualified beneficiary of the trust. The
 331 ~~joinder in, or consent to, a petition for summary administration~~
 332 ~~is not required of a beneficiary who will receive full~~
 333 ~~distributive share under the proposed distribution. Any~~
 334 ~~beneficiary not joining or consenting shall receive formal~~
 335 ~~notice of the petition.~~

336 Section 13. Subsection (8) of section 739.102, Florida
 337 Statutes, is amended to read:

338 739.102 Definitions.--As used in this chapter, the term:

339 (8) "Insolvent" means, solely for purposes of this
 340 chapter, that the sum of a person's debts is greater than all of
 341 the person's assets at fair valuation and that. ~~A person is~~
 342 ~~presumed to be "insolvent"~~ if the person is generally not paying
 343 his or her debts as they become due. For purposes of this
 344 subsection, the term "assets" has the same meaning as that
 345 provided in s. 726.102.

346 Section 14. Subsection (2) of section 739.104, Florida
 347 Statutes, is amended to read:

348 739.104 Power to disclaim; general requirements; when
 349 irrevocable.--

350 (2) With court approval, a fiduciary may disclaim, in
 351 whole or part, any interest in or power over property, including
 352 a power of appointment, except that a disclaimer of a power
 353 arising under s. 739.201(4) does not require court approval.
 354 Without court approval, a fiduciary may disclaim, in whole or in
 355 part, any interest in or power over property, including a power
 356 of appointment, if and to the extent that the instrument
 357 creating the fiduciary relationship explicitly grants the
 358 fiduciary the right to disclaim. In the absence of a court-
 359 appointed guardian, notwithstanding anything in chapter 744 to
 360 the contrary, without court approval, a natural guardian under
 361 s. 744.301 may disclaim on behalf of a minor child of the
 362 natural guardian, in whole or in part, any interest in or power
 363 over property, including a power of appointment, which the minor

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364 child is to receive solely as a result of another disclaimer,
 365 but only if the disclaimed interest or power does not pass to or
 366 for the benefit of the natural guardian as a result of the
 367 disclaimer.

368 Section 15. Subsection (4) is added to section 739.201,
 369 Florida Statutes, to read:

370 739.201 Disclaimer of interest in property.--Except for a
 371 disclaimer governed by s. 739.202, s. 739.203, or s. 739.204,
 372 the following rules apply to a disclaimer of an interest in
 373 property:

374 (4) In the case of a disclaimer of property over which the
 375 disclaimant has a power, in a fiduciary or nonfiduciary
 376 capacity, to direct the beneficial enjoyment of the disclaimed
 377 property, unless the disclaimer specifically provides to the
 378 contrary with reference to this subsection, the disclaimant
 379 shall also be deemed to have disclaimed that power unless the
 380 power is limited by an ascertainable standard, as defined in s.
 381 736.0103, as in effect when the disclaimer becomes irrevocable.

382 Section 16. Subsection (3) of section 739.207, Florida
 383 Statutes, is amended to read:

384 739.207 Disclaimer of power held in fiduciary capacity.--

385 (3) A disclaimer under this section is effective as to
 386 another fiduciary if the disclaimer so provides and the
 387 fiduciary disclaiming has the authority to bind the estate,
 388 trust, or other person for whom the fiduciary is acting, except
 389 that a disclaimer of a fiduciary power arising under s.
 390 739.201(4) shall bind only the disclaiming fiduciary.

391 Section 17. Subsection (2) of section 739.402, Florida
 392 Statutes, is amended to read:

393 739.402 When disclaimer is barred or limited.--

394 (2) A disclaimer of an interest in property is barred if
 395 any of the following events occur before the disclaimer becomes
 396 effective:

397 (a) The disclaimant ~~disclaimer~~ accepts the interest sought
 398 to be disclaimed;

399 (b) The disclaimant voluntarily assigns, conveys,
 400 encumbers, pledges, or transfers the interest sought to be
 401 disclaimed or contracts to do so;

402 (c) The interest sought to be disclaimed is sold pursuant
 403 to a judicial sale; or

404 (d) The disclaimant is insolvent when the disclaimer
 405 becomes irrevocable.

406 Section 18. Section 739.501, Florida Statutes, is amended
 407 to read:

408 739.501 Tax-qualified disclaimer.--Notwithstanding any
 409 ~~other~~ provision of this chapter other than s. 739.402, if, as a
 410 result of a disclaimer or transfer, the disclaimed or
 411 transferred interest is treated pursuant to the provisions of s.
 412 2518 of the Internal Revenue Code of 1986 as never having been
 413 transferred to the disclaimant, the disclaimer or transfer is
 414 effective as a disclaimer under this chapter.

415 Section 19. Paragraph (b) of subsection (3) of section
 416 660.417, Florida Statutes, is amended to read:

417 660.417 Investment of fiduciary funds in investment
 418 instruments; permissible activity under certain circumstances;
 419 limitations.--

420 (3) The fact that such bank or trust company or an
 421 affiliate of the bank or trust company owns or controls
 422 investment instruments shall not preclude the bank or trust
 423 company acting as a fiduciary from investing or reinvesting in
 424 such investment instruments, provided such investment
 425 instruments:

426 (b) When sold to accounts for which the bank or trust
 427 company is acting as a trustee of a trust as defined in s.
 428 731.201~~(37)~~:

429 1. Are available for sale to accounts of other customers;
 430 and

431 2. If sold to other customers, are not sold to the trust
 432 accounts upon terms that are less favorable to the buyer than
 433 the terms upon which they are normally sold to the other
 434 customers.

435 Section 20. Paragraph (f) of subsection (5) of section
 436 736.0802, Florida Statutes, is amended to read:

437 736.0802 Duty of loyalty.--

438 (5)

439 (f)1. The trustee of a trust as defined ~~described~~ in s.
 440 731.201~~(37)~~ may request authority to invest in investment
 441 instruments described in this subsection other than a qualified
 442 investment instrument, by providing to all qualified
 443 beneficiaries a written request containing the following:

444 a. The name, telephone number, street address, and mailing
 445 address of the trustee and of any individuals who may be
 446 contacted for further information.

447 b. A statement that the investment or investments cannot
 448 be made without the consent of a majority of each class of the
 449 qualified beneficiaries.

450 c. A statement that, if a majority of each class of
 451 qualified beneficiaries consent, the trustee will have the right
 452 to make investments in investment instruments, as defined in s.
 453 660.25(6), which are owned or controlled by the trustee or its
 454 affiliate, or from which the trustee or its affiliate receives
 455 compensation for providing services in a capacity other than as
 456 trustee, that such investment instruments may include investment
 457 instruments sold primarily to trust accounts, and that the
 458 trustee or its affiliate may receive fees in addition to the
 459 trustee's compensation for administering the trust.

460 d. A statement that the consent may be withdrawn
 461 prospectively at any time by written notice given by a majority
 462 of any class of the qualified beneficiaries.

463
 464 A statement by the trustee is not delivered if the statement is
 465 accompanied by another written communication other than a
 466 written communication by the trustee that refers only to the
 467 statement.

468 2. For purposes of paragraph (e) and this paragraph:

469 a. "Majority of the qualified beneficiaries" means:

470 (I) If at the time the determination is made there are one
 471 or more beneficiaries as described in s. 736.0103(14)(c), at

472 least a majority in interest of the beneficiaries described in
 473 s. 736.0103(14) (a), at least a majority in interest of the
 474 beneficiaries described in s. 736.0103(14) (b), and at least a
 475 majority in interest of the beneficiaries described in s.
 476 736.0103(14) (c), if the interests of the beneficiaries are
 477 reasonably ascertainable; otherwise, a majority in number of
 478 each such class; or

479 (II) If there is no beneficiary as described in s.
 480 736.0103(14) (c), at least a majority in interest of the
 481 beneficiaries described in s. 736.0103(14) (a) and at least a
 482 majority in interest of the beneficiaries described in s.
 483 736.0103(14) (b), if the interests of the beneficiaries are
 484 reasonably ascertainable; otherwise, a majority in number of
 485 each such class.

486 b. "Qualified investment instrument" means a mutual fund,
 487 common trust fund, or money market fund described in and
 488 governed by s. 736.0816(3).

489 c. An irrevocable trust is created upon execution of the
 490 trust instrument. If a trust that was revocable when created
 491 thereafter becomes irrevocable, the irrevocable trust is created
 492 when the right of revocation terminates.

493 Section 21. Subsection (10) of section 895.02, Florida
 494 Statutes, is amended to read:

495 895.02 Definitions.--As used in ss. 895.01-895.08, the
 496 term:

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

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

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

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

505

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

511 Section 22. This act shall take effect July 1, 2009.