

1 A bill to be entitled
2 An act relating to probate procedures; amending s.
3 655.934, F.S.; updating terminology relating to a durable
4 power of attorney; amending s. 655.935, F.S.; imposing
5 additional duties on the lessor of a safe-deposit box
6 relating to the contents of the box when the lessee has
7 died; authorizing the lessor to charge fees for performing
8 such duties; amending s. 731.110, F.S.; revising
9 requirements relating to filing a caveat; providing that a
10 caveat may be filed before or after a person's death;
11 providing for the expiration of the caveat; amending s.
12 731.201, F.S.; revising the definitions of "formal notice"
13 and "informal notice"; amending s. 731.301, F.S.; revising
14 provisions relating to notice; amending s. 732.2125, F.S.;
15 revising a provision relating to the right of election;
16 amending s. 732.401, F.S.; providing that a decedent's
17 spouse may elect to take an interest in a homestead as a
18 tenant in common rather than a life estate; providing
19 procedures and forms for filing notice of such election;
20 providing that such election is irrevocable; providing for
21 the allocation of expenses relating to the homestead;
22 specifying that the interests of the decedent's
23 descendants in the homestead may not be divested if the
24 spouse's interest is disclaimed; amending s. 732.4015,
25 F.S.; providing that if a spouse's interest in a homestead
26 has been disclaimed, the disclaimed interest passes in
27 accordance with ch. 739, F.S.; creating s. 732.4017, F.S.;
28 providing for the inter vivos transfer of homestead

29 | property; providing limitations; amending s. 732.608,
 30 | F.S.; revising provisions relating to which laws apply
 31 | when determining intestate succession in certain
 32 | circumstances; creating s. 732.805, F.S.; denying certain
 33 | rights or benefits to a surviving spouse who procured a
 34 | marriage by fraud, duress, or undue influence; providing
 35 | procedures for challenging a surviving spouse; providing
 36 | for the award of costs and fees; providing a time
 37 | limitation on bringing such actions; amending s. 733.2123,
 38 | F.S.; deleting the requirement for attaching a copy of a
 39 | will to a notice of a petition for administration;
 40 | amending s. 733.608, F.S.; specifying the manner for
 41 | serving notice of the personal representative's lien for
 42 | expenditures and obligations incurred; amending s.
 43 | 735.203, F.S.; revising provisions relating to providing
 44 | notice for a petition for summary administration; amending
 45 | s. 736.1102, F.S.; clarifying provisions relating to which
 46 | laws apply when determining intestate succession in
 47 | certain circumstances; amending s. 744.444, F.S.;
 48 | conforming provisions to changes made by the act;
 49 | providing an effective date.

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |
 53 | Section 1. Section 655.934, Florida Statutes, is amended
 54 | to read:

55 | 655.934 Effect of lessee's death or incapacity.—If a
 56 | lessor without knowledge of the death or ~~of~~ an order determining

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57 the incapacity of the lessee deals with the lessee's agent in
 58 accordance with a written power of attorney or a durable ~~family~~
 59 power of attorney signed by such lessee, the transaction binds
 60 the lessee's estate and the lessee.

61 Section 2. Section 655.935, Florida Statutes, is amended
 62 to read:

63 655.935 Search procedure on death of lessee.—If
 64 satisfactory proof of the death of the lessee is presented, a
 65 lessor shall permit the person named in a court order for that
 66 ~~the~~ purpose, or if no order has been served upon the lessor, the
 67 spouse, a parent, an adult descendant, or a person named as a
 68 personal representative in a copy of a purported will produced
 69 by such person, to open and examine the contents of a safe-
 70 deposit box leased or coleased by a decedent, or any documents
 71 delivered by a decedent for safekeeping, in the presence of an
 72 officer of the lessor. ~~and the lessor,~~

73 (1) If ~~so~~ requested by such person, the lessor shall
 74 remove and deliver only ~~shall deliver:~~

75 (a) ~~(1)~~ Any writing purporting to be a will of the
 76 decedent, to the court having probate jurisdiction in the county
 77 in which the financial institution is located.

78 (b) ~~(2)~~ Any writing purporting to be a deed to a burial
 79 plot or to give burial instructions, to the person making the
 80 request for a search.

81 (c) ~~(3)~~ Any document purporting to be an insurance policy
 82 on the life of the decedent, to the beneficiary named therein.

83 (2) The officer of the lessor shall make a complete copy
 84 of any document removed and delivered pursuant to this section

85 and place that copy, together with a memorandum of delivery
 86 identifying the name of the officer, the person to whom the
 87 document was delivered, the purported relationship of the person
 88 to whom the document was delivered, and the date of delivery, in
 89 the safe-deposit box leased or coleased by the decedent.

90 (3) The lessor may charge reasonable fees to cover costs
 91 incurred pursuant to this section.

92 (4) No other contents may be removed pursuant to this
 93 section. Access granted pursuant to this section ~~is shall~~ not be
 94 considered the initial opening of the safe-deposit box pursuant
 95 to s. 733.6065 ~~by a personal representative appointed by a court~~
 96 ~~in this state.~~

97 Section 3. Section 731.110, Florida Statutes, is amended
 98 to read:

99 731.110 Caveat; proceedings.—

100 (1) Any interested person, ~~including a creditor,~~ who is
 101 apprehensive that an estate, either testate or intestate, will
 102 be administered or that a will may be admitted to probate
 103 without that the person's knowledge may file a caveat with the
 104 court. The caveat of the interested person, other than a
 105 creditor, may be filed before or after the death of the person
 106 for whom the estate will be, or is being, administered. The
 107 caveat of a creditor may be filed only after the person's death.

108 ~~(2) A caveat shall contain the decedent's social security~~
 109 ~~number, last known residence address, and date of birth, if they~~
 110 ~~are known, as identification, a statement of the interest of the~~
 111 ~~caveator in the estate, the name and specific residence address~~
 112 ~~of the caveator, and, If the caveator, other than a state~~

113 ~~agency,~~ is a nonresident and is not represented by an attorney
 114 admitted to practice in this state who has signed the caveat
 115 ~~nonresident of the county,~~ the caveator must designate
 116 ~~additional name and specific residence address of some person~~
 117 ~~residing in the county in which the caveat is filed, or office~~
 118 ~~address of a member of The Florida Bar residing in Florida,~~
 119 ~~designated~~ as the agent of the caveator, upon whom service may
 120 be made; however, if the caveator is represented by an attorney
 121 admitted to practice in this state who has signed the caveat, it
 122 is not necessary to designate a resident agent.

123 (3) ~~If when~~ a caveat has been filed by an interested
 124 person other than a creditor, the court may ~~shall~~ not admit a
 125 will of the decedent to probate or appoint a personal
 126 representative until formal notice of the petition for
 127 administration has been served on the caveator or the caveator's
 128 designated agent ~~by formal notice~~ and the caveator has had the
 129 opportunity to participate in proceedings on the petition, as
 130 provided by the Florida Probate Rules.

131 (4) A caveat filed before the death of the person for whom
 132 the estate will be administered expires 2 years after filing.

133 Section 4. Subsections (18) and (22) of section 731.201,
 134 Florida Statutes, are amended to read:

135 731.201 General definitions.—Subject to additional
 136 definitions in subsequent chapters that are applicable to
 137 specific chapters or parts, and unless the context otherwise
 138 requires, in this code, in s. 409.9101, and in chapters 736,
 139 738, 739, and 744, the term:

140 (18) "Formal notice" means a form of ~~formal~~ notice that is

141 described in and served by a method of services provided under
 142 rule 5.040(a) of the Florida Probate Rules.

143 (22) "Informal notice" or "notice" means a method of
 144 service for pleadings or papers as provided ~~informal notice~~
 145 under rule 5.040(b) of the Florida Probate Rules.

146 Section 5. Section 731.301, Florida Statutes, is amended
 147 to read:

148 731.301 Notice.—

149 (1) If ~~When~~ notice to an interested person of a petition
 150 or other proceeding is required, the notice shall be given to
 151 the interested person or that person's attorney as provided in
 152 the code or the Florida Probate Rules.

153 (2) In a probate proceeding, formal notice is ~~shall be~~
 154 sufficient to acquire jurisdiction over the person receiving
 155 formal notice to the extent of the person's interest in the
 156 estate or in the decedent's protected homestead.

157 (3) Persons given proper notice of a ~~any~~ proceeding are
 158 ~~shall be~~ bound by all orders entered in that proceeding.

159 Section 6. Subsection (2) of section 732.2125, Florida
 160 Statutes, is amended to read:

161 732.2125 Right of election; by whom exercisable.—The right
 162 of election may be exercised:

163 (2) With approval of the court having jurisdiction of the
 164 probate proceeding by an attorney in fact or a guardian of the
 165 property of the surviving spouse. Before approving the election,
 166 the court shall determine that the election is in ~~as~~ the best
 167 interests of the surviving spouse, ~~during the spouse's probable~~
 168 ~~lifetime, require.~~

169 Section 7. Section 732.401, Florida Statutes, is amended
 170 to read:

171 732.401 Descent of homestead.—

172 (1) If not devised as authorized ~~permitted~~ by law and the
 173 ~~Florida~~ constitution, the homestead shall descend in the same
 174 manner as other intestate property; but if the decedent is
 175 survived by a spouse and one or more descendants, the surviving
 176 spouse shall take a life estate in the homestead, with a vested
 177 remainder to the descendants in being at the time of the
 178 decedent's death per stirpes.

179 (2) In lieu of a life estate under subsection (1), the
 180 surviving spouse may elect to take an undivided one-half
 181 interest in the homestead as a tenant in common, with the
 182 remaining undivided one-half interest vesting in the decedent's
 183 descendants in being at the time of the decedent's death, per
 184 stirpes.

185 (a) The right of election may be exercised:

186 1. By the surviving spouse; or

187 2. With the approval of a court having jurisdiction of the
 188 real property, by an attorney in fact or guardian of the
 189 property of the surviving spouse. Before approving the election,
 190 the court shall determine that the election is in the best
 191 interests of the surviving spouse during the spouse's probable
 192 lifetime.

193 (b) The election must be made within 6 months after the
 194 decedent's death and during the surviving spouse's lifetime. The
 195 time for making the election may not be extended except as
 196 provided in paragraph (c).

197 (c) A petition by an attorney in fact or guardian of the
 198 property for approval to make the election tolls the time for
 199 making the election until 6 months after the decedent's death or
 200 30 days after the rendition of an order authorizing the
 201 election, whichever occurs last.

202 (d) Once made, the election is irrevocable.

203 (e) The election shall be made by filing a notice of
 204 election containing the legal description of the homestead
 205 property for recording in the official record books of the
 206 county or counties where the homestead property is located. The
 207 notice must be in substantially the following form:

208
 209 ELECTION OF SURVIVING SPOUSE
 210 TO TAKE A ONE-HALF INTEREST OF
 211 DECEDENT'S INTEREST IN HOMESTEAD PROPERTY

212
 213 STATE OF.....

214 COUNTY OF.....

215
 216 1. The decedent, _____, died on _____.
 217 On the date of the decedent's death, The decedent was married to
 218 _____, who survived the decedent.

219 2. At the time of the decedent's death, the decedent owned
 220 an interest in real property that the affiant believes to be
 221 homestead property described in s. 14, Article X of the State
 222 Constitution, that real property being in _____ County,
 223 Florida, and described as: ...(description of homestead
 224 property)....

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225 3. Affiant elects to take one-half of decedent's interest
226 in the homestead as a tenant in common in lieu of a life estate.

227 4. If affiant is not the surviving spouse, affiant is the
228 surviving spouse's attorney in fact or guardian of the property
229 and an order has been rendered by a court having jurisdiction of
230 the real property authorizing the undersigned to make this
231 election.

232
233
234 ... (Affiant)...

235
236 Sworn to (or affirmed) and subscribed before me this day of
237 ...(month)..., ...(year)..., by ...(affiant)...

238
239 ...(Signature of Notary Public-State of Florida)...

240
241 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

242
243 Personally Known OR Produced Identification

244 ...(Type of Identification Produced)...

245
246 (3) Unless and until an election is made under subsection
247 (2), expenses relating to the ownership of the homestead shall
248 be allocated between the surviving spouse, as life tenant, and
249 the decedent's descendants, as remaindermen, in accordance with
250 chapter 738. If an election is made, expenses relating to the
251 ownership of the homestead shall be allocated between the
252 surviving spouse and the descendants as tenants in common in

253 proportion to their respective shares, effective as of the date
 254 the election is filed for recording.

255 (4) If the surviving spouse's life estate created in
 256 subsection (1) is disclaimed pursuant to chapter 739, the
 257 interests of the decedent's descendants may not be divested.

258 (5)-(2) This section does ~~Subsection (1) shall~~ not apply to
 259 property that the decedent and the surviving spouse owned in
 260 tenancy by the entireties or joint tenancy with rights of
 261 survivorship as tenants by the entirety.

262 Section 8. Subsection (3) is added to section 732.4015,
 263 Florida Statutes, to read:

264 732.4015 Devise of homestead.—

265 (3) If an interest in homestead has been devised to the
 266 surviving spouse as authorized by law and the constitution, and
 267 the surviving spouse's interest is disclaimed, the disclaimed
 268 interest shall pass in accordance with chapter 739.

269 Section 9. Section 732.4017, Florida Statutes, is created
 270 to read:

271 732.4017 Inter vivos transfer of homestead property.—

272 (1) If the owner of homestead property transfers an
 273 interest in that property, including a transfer in trust, with
 274 or without consideration, to one or more persons during the
 275 owner's lifetime, the transfer is not a devise for purposes of
 276 s. 731.201(10) or s. 732.4015, and the interest transferred does
 277 not descend as provided in s. 732.401 if the transferor fails to
 278 retain a power, held in any capacity, acting alone or in
 279 conjunction with any other person, to revoke or revest that
 280 interest in the transferor.

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281 (2) As used in this section, the term "transfer in trust"
282 refers to a trust under which the transferor of the homestead
283 property, alone or in conjunction with another person, does not
284 possess a right of revocation as that term is defined in s.
285 733.707(3)(e). A power possessed by the transferor which is
286 exercisable during the transferor's lifetime to alter the
287 beneficial use and enjoyment of the interest within a class of
288 beneficiaries identified only in the trust instrument is not a
289 right of revocation if the power may not be exercised in favor
290 of the transferor, the transferor's creditors, the transferor's
291 estate, or the creditors of the transferor's estate or exercised
292 to discharge the transferor's legal obligations. This subsection
293 does not create an inference that a power not described in this
294 subsection is a power to revoke or revest an interest in the
295 transferor.

296 (3) The transfer of an interest in homestead property
297 described in subsection (1) may not be treated as a devise of
298 that interest even if:

299 (a) The transferor retains a separate legal or equitable
300 interest in the homestead property, directly or indirectly
301 through a trust or other arrangement such as a term of years,
302 life estate, reversion, possibility of reverter, or fractional
303 fee interest;

304 (b) The interest transferred does not become a possessory
305 interest until a date certain or upon a specified event, the
306 occurrence or nonoccurrence of which does not constitute a power
307 held by the transferor to revoke or revest the interest in the
308 transferor, including, without limitation, the death of the

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309 transferor; or

310 (c) The interest transferred is subject to divestment,
 311 expiration, or lapse upon a date certain or upon a specified
 312 event, the occurrence or nonoccurrence of which does not
 313 constitute a power held by the transferor to revoke or revest
 314 the interest in the transferor, including, without limitation,
 315 survival of the transferor.

316 (4) It is the intent of the Legislature that this section
 317 clarify existing law.

318 Section 10. Section 732.608, Florida Statutes, is amended
 319 to read:

320 732.608 Construction of ~~generic~~ terms.—The laws used to
 321 determine paternity and ~~Adopted persons and persons born out of~~
 322 wedlock are included in class gift terminology and terms of
 323 relationship, in accordance with rules for determining
 324 relationships for the purposes of intestate succession apply
 325 when determining whether class gift terminology and terms of
 326 relationship include adopted persons and persons born out-of-
 327 wedlock.

328 Section 11. Section 732.805, Florida Statutes, is created
 329 to read:

330 732.805 Spousal rights procured by fraud, duress, or undue
 331 influence.—

332 (1) A surviving spouse who is found to have procured a
 333 marriage to the decedent by fraud, duress, or undue influence is
 334 not entitled to any of the following rights or benefits that
 335 inure solely by virtue of the marriage or the person's status as
 336 surviving spouse of the decedent unless both spouses

337 subsequently ratified the marriage:

338 (a) Any rights or benefits under the Florida Probate Code,
339 including, but not limited to, entitlement to elective share or
340 family allowance; preference in appointment as personal
341 representative; inheritance by intestacy, homestead, or exempt
342 property; or inheritance as a pretermitted spouse.

343 (b) Any rights or benefits under a bond, life insurance
344 policy, or other contractual arrangement if the decedent is the
345 principal obligee or the person upon whose life the policy is
346 issued, unless the surviving spouse is provided for by name,
347 whether or not designated as the spouse, in the bond, life
348 insurance policy, or other contractual arrangement.

349 (c) Any rights or benefits under a will, trust, or power
350 of appointment, unless the surviving spouse is provided for by
351 name, whether or not designated as the spouse, in the will,
352 trust, or power of appointment.

353 (d) Any immunity from the presumption of undue influence
354 that a surviving spouse may have under state law.

355 (2) Any of the rights or benefits listed in paragraphs
356 (1) (a)-(c) which would have passed solely by virtue of the
357 marriage to a surviving spouse who is found to have procured the
358 marriage by fraud, duress, or undue influence shall pass as if
359 the spouse had predeceased the decedent.

360 (3) A challenge to a surviving spouse's rights under this
361 section may be maintained as a defense, objection, or cause of
362 action by any interested person after the death of the decedent
363 in any proceeding in which the fact of marriage may be directly
364 or indirectly material.

365 (4) The contestant has the burden of establishing, by a
 366 preponderance of the evidence, that the marriage was procured by
 367 fraud, duress, or undue influence. If ratification of the
 368 marriage is raised as a defense, the surviving spouse has the
 369 burden of establishing, by a preponderance of the evidence, the
 370 subsequent ratification by both spouses.

371 (5) In all actions brought under this section, the court
 372 shall award taxable costs as in chancery actions, including
 373 attorney's fees. When awarding taxable costs and attorney's
 374 fees, the court may direct payment from a party's interest, if
 375 any, in the estate, or enter a judgment that may be satisfied
 376 from other property of the party, or both.

377 (6) An insurance company, bank, or other obligor making
 378 payment according to the terms of its policy or obligation is
 379 not liable by reason of this section unless, before payment, it
 380 received at its home office or principal address written notice
 381 of a claim pursuant to this section.

382 (7) The rights and remedies granted in this section are in
 383 addition to any other rights or remedies a person may have at
 384 law or equity.

385 (8) Unless sooner barred by adjudication, estoppel, or a
 386 provision of the Florida Probate Code or Florida Probate Rules,
 387 an interested person is barred from bringing an action under
 388 this section unless the action is commenced within 4 years after
 389 the decedent's date of death. A cause of action under this
 390 section accrues on the decedent's date of death.

391 Section 12. Section 733.2123, Florida Statutes, is amended
 392 to read:

393 733.2123 Adjudication before issuance of letters.—A
 394 petitioner may serve formal notice of the petition for
 395 administration on interested persons. ~~A copy of the will offered~~
 396 ~~for probate shall be attached to the notice. A~~ No person who is
 397 served with such ~~formal~~ notice before ~~of the petition for~~
 398 ~~administration prior to~~ the issuance of letters or who has
 399 waived notice may not challenge the validity of the will,
 400 testacy of the decedent, qualifications of the personal
 401 representative, venue, or jurisdiction of the court, except in
 402 the proceedings before issuance of letters.

403 Section 13. Subsection (4) of section 733.608, Florida
 404 Statutes, is amended to read:

405 733.608 General power of the personal representative.—

406 (4) The personal representative's lien shall attach to the
 407 property and take priority as of the date and time a notice of
 408 that lien is recorded in the official records of the county
 409 where that property is located, and the lien may secure
 410 expenditures and obligations incurred, including, but not
 411 limited to, fees and costs made before or after recording the
 412 notice. The notice of lien may be recorded before adjudicating
 413 ~~prior to the adjudication of~~ the amount of the debt. The notice
 414 of lien ~~also~~ shall also be filed in the probate proceeding, but
 415 failure to do so does ~~shall~~ not affect the validity of the lien.
 416 A copy of the notice of lien shall be served in the manner
 417 provided for service of ~~by~~ formal notice upon each person
 418 appearing to have an interest in the property. The notice of
 419 lien must ~~shall~~ state:

420 (a) The name and address of the personal representative

421 and the personal representative's attorney;

422 (b) The legal description of the property;

423 (c) The name of the decedent and also, to the extent known
 424 to the personal representative, the name and address of each
 425 person appearing to have an interest in the property; and

426 (d) That the personal representative has expended or is
 427 obligated to expend funds to preserve, maintain, insure, and
 428 protect the property and that the lien stands as security for
 429 recovery of those expenditures and obligations incurred,
 430 including, but not limited to, fees and costs.

431
 432 Substantial compliance with the foregoing provisions renders
 433 ~~shall render~~ the notice in comportment with this section.

434 Section 14. Subsections (1) and (3) of section 735.203,
 435 Florida Statutes, are amended to read:

436 735.203 Petition for summary administration.—

437 (1) A petition for summary administration may be filed by
 438 any beneficiary or person nominated as personal representative
 439 in the decedent's will offered for probate. The petition must be
 440 signed and verified by the surviving spouse, if any, and any
 441 beneficiaries except that the joinder in a petition for summary
 442 administration is not required of a beneficiary who will receive
 443 a full distributive share under the proposed distribution.

444 However, formal notice of the petition must be served on a ~~Any~~
 445 ~~beneficiary not joining in shall be served by formal notice with~~
 446 ~~the petition.~~

447 (3) If each trustee of a trust that is a beneficiary of
 448 the estate of the deceased person is also a petitioner, formal

449 notice of the petition for summary administration shall be
 450 served on each qualified beneficiary of the trust as defined in
 451 s. 736.0103 ~~shall be served by formal notice with the petition~~
 452 ~~for summary administration~~ unless joinder in, or consent to, the
 453 petition is obtained from each qualified beneficiary of the
 454 trust.

455 Section 15. Section 736.1102, Florida Statutes, is amended
 456 to read:

457 736.1102 Construction of ~~generic~~ terms.—The laws used to
 458 determine paternity and Adopted persons and persons born out of
 459 ~~wedlock are included in class gift terminology and terms of~~
 460 ~~relationship, in accordance with rules for determining~~
 461 ~~relationships for the purposes of intestate succession apply~~
 462 when determining whether class gift terminology and terms of
 463 relationship include adopted persons and persons born out of
 464 wedlock.

465 Section 16. Subsection (9) of section 744.444, Florida
 466 Statutes, is amended to read:

467 744.444 Power of guardian without court approval.—Without
 468 obtaining court approval, a plenary guardian of the property, or
 469 a limited guardian of the property within the powers granted by
 470 the order appointing the guardian or an approved annual or
 471 amended guardianship report, may:

472 (9) Elect ~~whether~~ to dissent from a will under ~~the~~
 473 provisions of s. 732.2125(2), seek approval to make an election
 474 in accordance with s. 732.401, or assert any other right or
 475 choice available to a surviving spouse in the administration of
 476 a decedent's estate.

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Section 17. This act shall take effect October 1, 2010.