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CS/CS/HB 1237

2010 Legislature

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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 limitation of
37 | liability relating to distributions made without notice of
38 | a pending claim; providing for means of notice; providing
39 | a time limitation on bringing such actions; creating s.
40 | 733.1051, F.S.; authorizing a court to construe the terms
41 | of certain wills for certain purposes under certain
42 | circumstances; providing definitions; providing criteria
43 | for court construction of a will; providing for
44 | nonapplication to certain dispositions; authorizing a
45 | personal representative to take certain actions without
46 | court order pending a determination of estate
47 | distribution; limiting personal representative liability;
48 | preserving certain rights to construe a will; providing
49 | for retroactive operation; amending s. 733.107, F.S.;
50 | providing that, in a will contest, certain affidavits and
51 | oaths are prima facie evidence relating to execution and
52 | attestation of a will; amending s. 733.2123, F.S.;
53 | deleting the requirement for attaching a copy of a will to
54 | a notice of a petition for administration; amending s.
55 | 733.608, F.S.; specifying the manner for serving notice of
56 | the personal representative's lien for expenditures and

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57 obligations incurred; amending s. 735.203, F.S.; revising
58 provisions relating to providing notice for a petition for
59 summary administration; amending s. 736.1102, F.S.;
60 clarifying provisions relating to which laws apply when
61 determining intestate succession in certain circumstances;
62 amending s. 744.444, F.S.; conforming provisions to
63 changes made by the act; providing effective dates.
64

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

66
67 Section 1. Section 655.934, Florida Statutes, is amended
68 to read:

69 655.934 Effect of lessee's death or incapacity.—If a
70 lessor without knowledge of the death or ~~of~~ an order determining
71 the incapacity of the lessee deals with the lessee's agent in
72 accordance with a written power of attorney or a durable ~~family~~
73 power of attorney signed by such lessee, the transaction binds
74 the lessee's estate and the lessee.

75 Section 2. Section 655.935, Florida Statutes, is amended
76 to read:

77 655.935 Search procedure on death of lessee.—If
78 satisfactory proof of the death of the lessee is presented, a
79 lessor shall permit the person named in a court order for that
80 ~~the~~ purpose, or if no order has been served upon the lessor, the
81 spouse, a parent, an adult descendant, or a person named as a
82 personal representative in a copy of a purported will produced
83 by such person, to open and examine the contents of a safe-
84 deposit box leased or coleased by a decedent, or any documents

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85 delivered by a decedent for safekeeping, in the presence of an
86 officer of the lessor. ~~and the lessor,~~

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

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

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

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

97 (2) The officer of the lessor shall make a complete copy
98 of any document removed and delivered pursuant to this section
99 and place that copy, together with a memorandum of delivery
100 identifying the name of the officer, the person to whom the
101 document was delivered, the purported relationship of the person
102 to whom the document was delivered, and the date of delivery, in
103 the safe-deposit box leased or coleased by the decedent.

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

106 (4) No other contents may be removed pursuant to this
107 section. Access granted pursuant to this section ~~is shall not be~~
108 considered the initial opening of the safe-deposit box pursuant
109 to s. 733.6065 ~~by a personal representative appointed by a court~~
110 ~~in this state.~~

111 Section 3. Section 731.110, Florida Statutes, is amended
112 to read:

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113 731.110 Caveat; proceedings.—

114 (1) Any interested person, ~~including a creditor,~~ who is
 115 apprehensive that an estate, either testate or intestate, will
 116 be administered or that a will may be admitted to probate
 117 without that ~~the~~ person's knowledge may file a caveat with the
 118 court. The caveat of the interested person, other than a
 119 creditor, may be filed before or after the death of the person
 120 for whom the estate will be, or is being, administered. The
 121 caveat of a creditor may be filed only after the person's death.

122 (2) ~~A caveat shall contain the decedent's social security~~
 123 ~~number, last known residence address, and date of birth, if they~~
 124 ~~are known, as identification, a statement of the interest of the~~
 125 ~~caveator in the estate, the name and specific residence address~~
 126 ~~of the caveator, and, If the caveator, other than a state~~
 127 ~~agency, is a nonresident and is not represented by an attorney~~
 128 admitted to practice in this state who has signed the caveat
 129 nonresident of the county, the caveator must designate
 130 additional name and specific residence address of some person
 131 residing in the county in which the caveat is filed, or office
 132 address of a member of The Florida Bar residing in Florida,
 133 ~~designated~~ as the agent of the caveator, upon whom service may
 134 be made; however, if the caveator is represented by an attorney
 135 admitted to practice in this state who has signed the caveat, it
 136 is not necessary to designate a resident agent.

137 (3) If ~~When~~ a caveat has been filed by an interested
 138 person other than a creditor, the court may ~~shall~~ not admit a
 139 will of the decedent to probate or appoint a personal
 140 representative until formal notice of the petition for

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141 administration has been served on the caveator or the caveator's
142 designated agent ~~by formal notice~~ and the caveator has had the
143 opportunity to participate in proceedings on the petition, as
144 provided by the Florida Probate Rules.

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

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

149 731.201 General definitions.—Subject to additional
150 definitions in subsequent chapters that are applicable to
151 specific chapters or parts, and unless the context otherwise
152 requires, in this code, in s. 409.9101, and in chapters 736,
153 738, 739, and 744, the term:

154 (18) "Formal notice" means a form of ~~formal~~ notice that is
155 described in and served by a method of services provided under
156 rule 5.040(a) of the Florida Probate Rules.

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

160 Section 5. Section 731.301, Florida Statutes, is amended
161 to read:

162 731.301 Notice.—

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

167 (2) In a probate proceeding, formal notice is ~~shall be~~
168 sufficient to acquire jurisdiction over the person receiving

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169 formal notice to the extent of the person's interest in the
170 estate or in the decedent's protected homestead.

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

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

175 732.2125 Right of election; by whom exercisable.—The right
176 of election may be exercised:

177 (2) With approval of the court having jurisdiction of the
178 probate proceeding by an attorney in fact or a guardian of the
179 property of the surviving spouse. Before approving the election,
180 the court shall determine that the election is in ~~as~~ the best
181 interests of the surviving spouse, ~~during the spouse's probable~~
182 ~~lifetime, require.~~

183 Section 7. Section 732.401, Florida Statutes, is amended
184 to read:

185 732.401 Descent of homestead.—

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

193 (2) In lieu of a life estate under subsection (1), the
194 surviving spouse may elect to take an undivided one-half
195 interest in the homestead as a tenant in common, with the
196 remaining undivided one-half interest vesting in the decedent's

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197 descendants in being at the time of the decedent's death, per
198 stirpes.

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

200 1. By the surviving spouse; or

201 2. With the approval of a court having jurisdiction of the
202 real property, by an attorney in fact or guardian of the
203 property of the surviving spouse. Before approving the election,
204 the court shall determine that the election is in the best
205 interests of the surviving spouse during the spouse's probable
206 lifetime.

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

211 (c) A petition by an attorney in fact or guardian of the
212 property for approval to make the election tolls the time for
213 making the election until 6 months after the decedent's death or
214 30 days after the rendition of an order authorizing the
215 election, whichever occurs last.

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

217 (e) The election shall be made by filing a notice of
218 election containing the legal description of the homestead
219 property for recording in the official record books of the
220 county or counties where the homestead property is located. The
221 notice must be in substantially the following form:

222

223 ELECTION OF SURVIVING SPOUSE
224 TO TAKE A ONE-HALF INTEREST OF

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DECEDENT'S INTEREST IN HOMESTEAD PROPERTY

STATE OF.....

COUNTY OF.....

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

2. At the time of the decedent's death, the decedent owned
an interest in real property that the affiant believes to be
homestead property described in s. 4, Article X of the State
Constitution, that real property being in _____ County,
Florida, and described as: ...(description of homestead
property)....

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

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

.....
...(Affiant)...

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

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253 ...(Signature of Notary Public-State of Florida)...

254

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

256

257 Personally Known OR Produced Identification

258 ...(Type of Identification Produced)...

259

260 (3) Unless and until an election is made under subsection

261 (2), expenses relating to the ownership of the homestead shall

262 be allocated between the surviving spouse, as life tenant, and

263 the decedent's descendants, as remaindermen, in accordance with

264 chapter 738. If an election is made, expenses relating to the

265 ownership of the homestead shall be allocated between the

266 surviving spouse and the descendants as tenants in common in

267 proportion to their respective shares, effective as of the date

268 the election is filed for recording.

269 (4) If the surviving spouse's life estate created in

270 subsection (1) is disclaimed pursuant to chapter 739, the

271 interests of the decedent's descendants may not be divested.

272 (5)(2) This section does Subsection (1) shall not apply to

273 property that the decedent and the surviving spouse owned in

274 tenancy by the entirety or joint tenancy with rights of

275 survivorship as tenants by the entirety.

276 Section 8. Subsection (3) is added to section 732.4015,

277 Florida Statutes, to read:

278 732.4015 Devise of homestead.—

279 (3) If an interest in homestead has been devised to the

280 surviving spouse as authorized by law and the constitution, and

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281 the surviving spouse's interest is disclaimed, the disclaimed
282 interest shall pass in accordance with chapter 739.

283 Section 9. Section 732.4017, Florida Statutes, is created
284 to read:

285 732.4017 Inter vivos transfer of homestead property.-

286 (1) If the owner of homestead property transfers an
287 interest in that property, including a transfer in trust, with
288 or without consideration, to one or more persons during the
289 owner's lifetime, the transfer is not a devise for purposes of
290 s. 731.201(10) or s. 732.4015, and the interest transferred does
291 not descend as provided in s. 732.401 if the transferor fails to
292 retain a power, held in any capacity, acting alone or in
293 conjunction with any other person, to revoke or revest that
294 interest in the transferor.

295 (2) As used in this section, the term "transfer in trust"
296 refers to a trust under which the transferor of the homestead
297 property, alone or in conjunction with another person, does not
298 possess a right of revocation as that term is defined in s.
299 733.707(3)(e). A power possessed by the transferor which is
300 exercisable during the transferor's lifetime to alter the
301 beneficial use and enjoyment of the interest within a class of
302 beneficiaries identified only in the trust instrument is not a
303 right of revocation if the power may not be exercised in favor
304 of the transferor, the transferor's creditors, the transferor's
305 estate, or the creditors of the transferor's estate or exercised
306 to discharge the transferor's legal obligations. This subsection
307 does not create an inference that a power not described in this
308 subsection is a power to revoke or revest an interest in the

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309 transferor.

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

313 (a) The transferor retains a separate legal or equitable
314 interest in the homestead property, directly or indirectly
315 through a trust or other arrangement such as a term of years,
316 life estate, reversion, possibility of reverter, or fractional
317 fee interest;

318 (b) The interest transferred does not become a possessory
319 interest until a date certain or upon a specified event, the
320 occurrence or nonoccurrence of which does not constitute a power
321 held by the transferor to revoke or revest the interest in the
322 transferor, including, without limitation, the death of the
323 transferor; or

324 (c) The interest transferred is subject to divestment,
325 expiration, or lapse upon a date certain or upon a specified
326 event, the occurrence or nonoccurrence of which does not
327 constitute a power held by the transferor to revoke or revest
328 the interest in the transferor, including, without limitation,
329 survival of the transferor.

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

332 Section 10. Section 732.608, Florida Statutes, is amended
333 to read:

334 732.608 Construction of ~~generic~~ generic terms.—The laws used to
335 determine paternity and ~~Adopted persons and persons born out of~~
336 ~~wedlock are included in class gift terminology and terms of~~

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337 ~~relationship, in accordance with rules for determining~~
 338 relationships for the purposes of intestate succession apply
 339 when determining whether class gift terminology and terms of
 340 relationship include adopted persons and persons born out-of-
 341 wedlock.

342 Section 11. Section 732.805, Florida Statutes, is created
 343 to read:

344 732.805 Spousal rights procured by fraud, duress, or undue
 345 influence.-

346 (1) A surviving spouse who is found to have procured a
 347 marriage to the decedent by fraud, duress, or undue influence is
 348 not entitled to any of the following rights or benefits that
 349 inure solely by virtue of the marriage or the person's status as
 350 surviving spouse of the decedent unless the decedent and the
 351 surviving spouse voluntarily cohabited as husband and wife with
 352 full knowledge of the facts constituting the fraud, duress, or
 353 undue influence or both spouses otherwise subsequently ratified
 354 the marriage:

355 (a) Any rights or benefits under the Florida Probate Code,
 356 including, but not limited to, entitlement to elective share or
 357 family allowance; preference in appointment as personal
 358 representative; inheritance by intestacy, homestead, or exempt
 359 property; or inheritance as a pretermitted spouse.

360 (b) Any rights or benefits under a bond, life insurance
 361 policy, or other contractual arrangement if the decedent is the
 362 principal obligee or the person upon whose life the policy is
 363 issued, unless the surviving spouse is provided for by name,
 364 whether or not designated as the spouse, in the bond, life

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365 insurance policy, or other contractual arrangement.

366 (c) Any rights or benefits under a will, trust, or power
367 of appointment, unless the surviving spouse is provided for by
368 name, whether or not designated as the spouse, in the will,
369 trust, or power of appointment.

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

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

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

382 (4) The contestant has the burden of establishing, by a
383 preponderance of the evidence, that the marriage was procured by
384 fraud, duress, or undue influence. If ratification of the
385 marriage is raised as a defense, the surviving spouse has the
386 burden of establishing, by a preponderance of the evidence, the
387 subsequent ratification by both spouses.

388 (5) In all actions brought under this section, the court
389 shall award taxable costs as in chancery actions, including
390 attorney's fees. When awarding taxable costs and attorney's
391 fees, the court may direct payment from a party's interest, if
392 any, in the estate, or enter a judgment that may be satisfied

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393 from other property of the party, or both.

394 (6) An insurance company, financial institution, or other
 395 obligor making payment according to the terms of its policy or
 396 obligation is not liable by reason of this section unless,
 397 before payment, it received written notice of a claim pursuant
 398 to this section.

399 (a) The notice required by this subsection must be in
 400 writing and must be accomplished in a manner reasonably suitable
 401 under the circumstances and likely to result in receipt of the
 402 notice. Permissible methods of notice include first-class mail,
 403 personal delivery, delivery to the person's last known place of
 404 residence or place of business, or a properly directed facsimile
 405 or other electronic message.

406 (b) To be effective, notice to a financial institution or
 407 insurance company must contain the name, address, and the
 408 taxpayer identification number, or the account or policy number,
 409 of the principal obligee or person whose life is insured and
 410 shall be directed to an officer or a manager of the financial
 411 institution or insurance company in this state. If the financial
 412 institution or insurance company has no offices in this state,
 413 the notice shall be directed to the principal office of the
 414 financial institution or insurance company.

415 (c) Notice shall be effective when given, except that
 416 notice to a financial institution or insurance company is not
 417 effective until 5 business days after being given.

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

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421 (8) Unless sooner barred by adjudication, estoppel, or a
 422 provision of the Florida Probate Code or Florida Probate Rules,
 423 an interested person is barred from bringing an action under
 424 this section unless the action is commenced within 4 years after
 425 the decedent's date of death. A cause of action under this
 426 section accrues on the decedent's date of death.

427 Section 12. Effective upon this act becoming a law,
 428 section 733.1051, Florida Statutes, is created to read:

429 733.1051 Limited judicial construction of will with
 430 federal tax provisions.-

431 (1) Upon the application of a personal representative or a
 432 person who is or may be a beneficiary who is affected by the
 433 outcome of the construction, a court at any time may construe
 434 the terms of a will to define the respective shares or determine
 435 beneficiaries, in accordance with the intention of a testator,
 436 if a disposition occurs during the applicable period and the
 437 will contains a provision that:

438 (a) Includes a disposition formula referring to the terms
 439 "unified credit," "estate tax exemption," "applicable exemption
 440 amount," "applicable credit amount," "applicable exclusion
 441 amount," "generation-skipping transfer tax exemption," "GST
 442 exemption," "marital deduction," "maximum marital deduction,"
 443 "unlimited marital deduction," or "maximum charitable
 444 deduction";

445 (b) Measures a share of an estate based on the amount that
 446 may pass free of federal estate tax or the amount that may pass
 447 free of federal generation-skipping transfer tax;

448 (c) Otherwise makes a disposition referring to a

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449 charitable deduction, marital deduction, or another provision of
450 federal estate tax or generation-skipping transfer tax law; or

451 (d) Appears to be intended to reduce or minimize the
452 federal estate tax or generation-skipping transfer tax.

453 (2) For purposes of this section:

454 (a) The term "applicable period" means a period beginning
455 January 1, 2010, and ending on the end of the day on the earlier
456 of December 31, 2010, or the day before the date that an act
457 becomes law that repeals or otherwise modifies or has the effect
458 of repealing or modifying s. 901 of The Economic Growth and Tax
459 Relief Reconciliation Act of 2001.

460 (b) A "disposition occurs" when the testator dies.

461 (3) In construing the will, the court shall consider the
462 terms and purposes of the will, the facts and circumstances
463 surrounding the creation of the will, and the testator's
464 probable intent. In determining the testator's probable intent,
465 the court may consider evidence relevant to the testator's
466 intent even though the evidence contradicts an apparent plain
467 meaning of the will.

468 (4) This section does not apply to a disposition that is
469 specifically conditioned upon no federal estate or generation-
470 skipping transfer tax being imposed.

471 (5) (a) Unless otherwise ordered by the court, during the
472 applicable period and without court order, the personal
473 representative administering a will containing one or more
474 provisions described in subsection (1) may:

475 1. Delay or refrain from making any distribution.

476 2. Incur and pay fees and costs reasonably necessary to

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477 determine its duties and obligations, including compliance with
478 provisions of existing and reasonably anticipated future federal
479 tax laws.

480 3. Establish and maintain reserves for the payment of
481 these fees and costs and federal taxes.

482 (b) The personal representative shall not be liable for
483 its actions as provided in this subsection made or taken in good
484 faith.

485 (6) The provisions of this section are in addition to, and
486 not in derogation of, rights under the common law to construe a
487 will.

488 (7) This section is remedial in nature and intended to
489 provide a new or modified legal remedy. This section shall
490 operate retroactively to January 1, 2010.

491 Section 13. Subsection (1) of section 733.107, Florida
492 Statutes, is amended to read:

493 733.107 Burden of proof in contests; presumption of undue
494 influence.—

495 (1) In all proceedings contesting the validity of a will,
496 the burden shall be upon the proponent of the will to establish
497 prima facie its formal execution and attestation. A self-proving
498 affidavit executed in accordance with s. 732.503 or an oath of
499 an attesting witness executed as required in s. 733.201(2) is
500 admissible and establishes prima facie the formal execution and
501 attestation of the will. Thereafter, the contestant shall have
502 the burden of establishing the grounds on which the probate of
503 the will is opposed or revocation is sought.

504 Section 14. Section 733.2123, Florida Statutes, is amended

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505 to read:

506 733.2123 Adjudication before issuance of letters.—A
507 petitioner may serve formal notice of the petition for
508 administration on interested persons. ~~A copy of the will offered~~
509 ~~for probate shall be attached to the notice. A~~ No person who is
510 served with such formal notice before ~~of the petition for~~
511 ~~administration prior to~~ the issuance of letters or who has
512 waived notice may not challenge the validity of the will,
513 testacy of the decedent, qualifications of the personal
514 representative, venue, or jurisdiction of the court, except in
515 the proceedings before issuance of letters.

516 Section 15. Subsection (4) of section 733.608, Florida
517 Statutes, is amended to read:

518 733.608 General power of the personal representative.—

519 (4) The personal representative's lien shall attach to the
520 property and take priority as of the date and time a notice of
521 that lien is recorded in the official records of the county
522 where that property is located, and the lien may secure
523 expenditures and obligations incurred, including, but not
524 limited to, fees and costs made before or after recording the
525 notice. The notice of lien may be recorded before adjudicating
526 ~~prior to the adjudication of~~ the amount of the debt. The notice
527 of lien ~~also~~ shall also be filed in the probate proceeding, but
528 failure to do so does ~~shall~~ not affect the validity of the lien.
529 A copy of the notice of lien shall be served in the manner
530 provided for service of ~~by~~ formal notice upon each person
531 appearing to have an interest in the property. The notice of
532 lien must ~~shall~~ state:

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- 533 (a) The name and address of the personal representative
534 and the personal representative's attorney;
- 535 (b) The legal description of the property;
- 536 (c) The name of the decedent and also, to the extent known
537 to the personal representative, the name and address of each
538 person appearing to have an interest in the property; and
- 539 (d) That the personal representative has expended or is
540 obligated to expend funds to preserve, maintain, insure, and
541 protect the property and that the lien stands as security for
542 recovery of those expenditures and obligations incurred,
543 including, but not limited to, fees and costs.

544

545 Substantial compliance with the foregoing provisions renders
546 ~~shall render~~ the notice in comportment with this section.

547 Section 16. Subsections (1) and (3) of section 735.203,
548 Florida Statutes, are amended to read:

549 735.203 Petition for summary administration.—

550 (1) A petition for summary administration may be filed by
551 any beneficiary or person nominated as personal representative
552 in the decedent's will offered for probate. The petition must be
553 signed and verified by the surviving spouse, if any, and any
554 beneficiaries except that the joinder in a petition for summary
555 administration is not required of a beneficiary who will receive
556 a full distributive share under the proposed distribution.
557 However, formal notice of the petition must be served on a Any
558 beneficiary not joining in ~~shall be served by formal notice with~~
559 the petition.

560 (3) If each trustee of a trust that is a beneficiary of

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561 the estate of the deceased person is also a petitioner, formal
562 notice of the petition for summary administration shall be
563 served on each qualified beneficiary of the trust as defined in
564 ~~s. 736.0103 shall be served by formal notice with the petition~~
565 ~~for summary administration~~ unless joinder in, or consent to, the
566 petition is obtained from each qualified beneficiary of the
567 trust.

568 Section 17. Section 736.1102, Florida Statutes, is amended
569 to read:

570 736.1102 Construction of ~~generic~~ terms.—The laws used to
571 determine paternity and ~~Adopted persons and persons born out of~~
572 ~~wedlock are included in class gift terminology and terms of~~
573 ~~relationship, in accordance with rules for determining~~
574 relationships for the purposes of intestate succession apply
575 when determining whether class gift terminology and terms of
576 relationship include adopted persons and persons born out of
577 wedlock.

578 Section 18. Subsection (9) of section 744.444, Florida
579 Statutes, is amended to read:

580 744.444 Power of guardian without court approval.—Without
581 obtaining court approval, a plenary guardian of the property, or
582 a limited guardian of the property within the powers granted by
583 the order appointing the guardian or an approved annual or
584 amended guardianship report, may:

585 (9) Elect ~~whether~~ to dissent from a will under ~~the~~
586 ~~provisions of~~ s. 732.2125(2), seek approval to make an election
587 in accordance with s. 732.401, or assert any other right or
588 choice available to a surviving spouse in the administration of

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589 | a decedent's estate.

590 | Section 19. Except as otherwise expressly provided in this
591 | act, this act shall take effect October 1, 2010.