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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2010	.	
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The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 380 - 480
and insert:

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

(a) The notice must be in writing and must be accomplished in a reasonable manner under the circumstances and likely to result in receipt of the notice. Permissible methods include first-class mail, personal delivery, delivery to the person's



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14 last known place of residence or place of business, or a
15 properly directed facsimile or other electronic means.

16 (b) Notice to an insurance company or financial institution
17 must contain the name, address, and taxpayer identification
18 number, or account or policy number, of the principal obligee or
19 person whose life is insured and be directed to an officer or a
20 manager of the insurance company or financial institution in
21 this state. If the insurance company or financial institution
22 does not have an office in this state, the notice must be
23 directed to the insurance company's or financial institution's
24 principal office.

25 (c) Notice is effective when given, except that notice upon
26 an insurance company or financial institution is not effective
27 until 5 business days after it is given.

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

31 (8) Unless sooner barred by adjudication, estoppel, or a
32 provision of the Florida Probate Code or Florida Probate Rules,
33 an interested person is barred from bringing an action under
34 this section unless the action is commenced within 4 years after
35 the decedent's date of death. A cause of action under this
36 section accrues on the decedent's date of death.

37 Section 12. Effective upon this act becoming a law, section
38 733.1051, Florida Statutes, is created to read:

39 733.1051 Limited judicial construction of will having
40 federal tax provisions.—

41 (1) For the purpose of this section:

42 (a) "Applicable period" means a period beginning January 1,



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43 2010, and ending at the end of December 31, 2010, or the day
44 before the date that a law which has the effect of repealing or
45 modifying s. 901 of the federal Economic Growth and Tax Relief
46 Reconciliation Act of 2001 becomes effective, whichever occurs
47 first.

48 (b) A disposition occurs when the testator dies.

49 (2) Upon application of a personal representative or a
50 person who is or may be a beneficiary who is affected by the
51 construction of a will, a court may at any time construe the
52 terms of the will to define the respective shares or determine
53 beneficiaries if a disposition occurs during the applicable
54 period and the will contains a provision that:

55 (a) Includes a formula disposition that refers to the
56 unified credit, estate tax exemption, applicable exemption
57 amount, applicable credit amount, applicable exclusion amount,
58 generation-skipping transfer tax exemption, GST exemption,
59 marital deduction, maximum marital deduction, unlimited marital
60 deduction, or maximum charitable deduction;

61 (b) Measures a share of an estate based on the amount that
62 can pass free of federal estate tax or the amount that can pass
63 free of federal generation-skipping transfer tax;

64 (c) Otherwise makes a disposition referring to a charitable
65 deduction, marital deduction, or another provision of federal
66 estate tax or generation-skipping transfer tax law; or

67 (d) Appears to be intended to reduce or minimize federal
68 estate tax or generation-skipping transfer tax.

69 (3) In construing a will under this section, the court
70 shall consider the terms and purposes of the will, the facts and
71 circumstances surrounding the creation of the will, and the



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72 testator's probable intent. In determining probable intent, the
73 court may consider evidence relevant to the testator's intent
74 even though the evidence contradicts the apparent plain meaning
75 of the will.

76 (4) This section does not apply to a disposition that is
77 specifically conditioned upon a federal estate or generation-
78 skipping transfer tax not being imposed.

79 (5) Unless otherwise ordered by the court, during the
80 applicable period and without court order, the personal
81 representative administering a will containing one or more
82 provisions described in subsection (2) may:

83 (a) Delay or refrain from making any distribution;

84 (b) Incur and pay fees and costs reasonably necessary to
85 determine his or her duties and obligations, including
86 compliance with existing and reasonably anticipated future
87 federal tax laws; and

88 (c) Establish and maintain reserves for the payment of
89 fees, costs, and federal taxes.

90
91 The personal representative is not liable for actions made in
92 good faith pursuant to this subsection.

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

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

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



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101 733.107 Burden of proof in contests; presumption of undue
102 influence.—

103 (1) In all proceedings contesting the validity of a will,
104 the burden shall be upon the proponent of the will to establish
105 prima facie its formal execution and attestation. A self-proving
106 affidavit executed in accordance with s. 732.503 or an oath of
107 an attesting witness executed as required in s. 733.201(2) is
108 admissible and establishes prima facie the formal execution and
109 attestation of the will. Thereafter, the contestant shall have
110 the burden of establishing the grounds on which the probate of
111 the will is opposed or revocation is sought.

112 Section 14. Section 733.2123, Florida Statutes, is amended
113 to read:

114 733.2123 Adjudication before issuance of letters.—A
115 petitioner may serve formal notice of the petition for
116 administration on interested persons. ~~A copy of the will offered~~
117 ~~for probate shall be attached to the notice.~~ A No person who is
118 served with such formal notice before ~~of the petition for~~
119 ~~administration prior to~~ the issuance of letters or who has
120 waived notice may not challenge the validity of the will,
121 testacy of the decedent, qualifications of the personal
122 representative, venue, or jurisdiction of the court, except in
123 the proceedings before issuance of letters.

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

126 733.608 General power of the personal representative.—

127 (4) The personal representative's lien shall attach to the
128 property and take priority as of the date and time a notice of
129 that lien is recorded in the official records of the county



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130 where that property is located, and the lien may secure
131 expenditures and obligations incurred, including, but not
132 limited to, fees and costs made before or after recording the
133 notice. The notice of lien may be recorded before adjudicating
134 ~~prior to the adjudication of~~ the amount of the debt. The notice
135 of lien ~~also~~ shall also be filed in the probate proceeding, but
136 failure to do so does ~~shall~~ not affect the validity of the lien.
137 A copy of the notice of lien shall be served in the manner
138 provided for service of ~~by~~ formal notice upon each person
139 appearing to have an interest in the property. The notice of
140 lien must ~~shall~~ state:

141 (a) The name and address of the personal representative and
142 the personal representative's attorney;

143 (b) The legal description of the property;

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

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

152
153 Substantial compliance with the foregoing provisions renders
154 ~~shall render~~ the notice in comportment with this section.

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

157 735.203 Petition for summary administration.—

158 (1) A petition for summary administration may be filed by



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159 any beneficiary or person nominated as personal representative
160 in the decedent's will offered for probate. The petition must be
161 signed and verified by the surviving spouse, if any, and any
162 beneficiaries except that the joinder in a petition for summary
163 administration is not required of a beneficiary who will receive
164 a full distributive share under the proposed distribution.
165 However, formal notice of the petition must be served on a ~~Any~~
166 beneficiary not joining ~~in shall be served by formal notice with~~
167 the petition.

168 (3) If each trustee of a trust that is a beneficiary of the
169 estate of the deceased person is also a petitioner, formal
170 notice of the petition for summary administration shall be
171 served on each qualified beneficiary of the trust as defined in
172 s. 736.0103 ~~shall be served by formal notice with the petition~~
173 ~~for summary administration~~ unless joinder in, or consent to, the
174 petition is obtained from each qualified beneficiary of the
175 trust.

176 Section 17. Section 736.1102, Florida Statutes, is amended
177 to read:

178 736.1102 Construction of ~~generic~~ terms.—The laws used to
179 determine paternity and Adopted persons and persons born out of
180 wedlock are included in class gift terminology and terms of
181 relationship, in accordance with rules for determining
182 relationships for the purposes of intestate succession apply
183 when determining whether class gift terminology and terms of
184 relationship include adopted persons and persons born out of
185 wedlock.

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



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188 744.444 Power of guardian without court approval.—Without
189 obtaining court approval, a plenary guardian of the property, or
190 a limited guardian of the property within the powers granted by
191 the order appointing the guardian or an approved annual or
192 amended guardianship report, may:

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

198 Section 19. Except as otherwise expressly provided in this
199 act and except for this section, which shall take effect upon
200 this act becoming a law, this act shall take effect October 1,
201 2010.

202
203 ===== T I T L E A M E N D M E N T =====

204 And the title is amended as follows:

205 Delete lines 39 - 52

206 and insert:

207 and fees; providing for notice to obligors; providing
208 a time limitation on bringing such actions; amending
209 s. 733.107, F.S.; providing that, in a will contest,
210 certain affidavits and oaths are prima facie evidence
211 relating to execution and attestation of a will;
212 amending s. 733.2123, F.S.; deleting the requirement
213 for attaching a copy of a will to a notice of a
214 petition for administration; amending s. 733.608,
215 F.S.; specifying the manner for serving notice of the
216 personal representative's lien for expenditures and



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217 obligations incurred; amending s. 735.203, F.S.;

218 revising provisions relating to providing notice for a

219 petition for summary administration; amending s.

220 736.1102, F.S.; clarifying provisions relating to

221 which laws apply when determining intestate succession

222 in certain circumstances; amending s. 744.444, F.S.;

223 conforming provisions to changes made by the act;

224 providing effective dates.