

By Senator Joyner

18-00562D-10

20101544

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

18-00562D-10

20101544

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

53  
54 Be It Enacted by the Legislature of the State of Florida:

55  
56 Section 1. Section 655.934, Florida Statutes, is amended to  
57 read:

58 655.934 Effect of lessee's death or incapacity.—If a lessor

18-00562D-10

20101544

59 without knowledge of the death or ~~of~~ an order determining the  
60 incapacity of the lessee deals with the lessee's agent in  
61 accordance with a written power of attorney or a durable ~~family~~  
62 power of attorney signed by such lessee, the transaction binds  
63 the lessee's estate and the lessee.

64 Section 2. Section 655.935, Florida Statutes, is amended to  
65 read:

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

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

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

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

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

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

18-00562D-10

20101544

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

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

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

100 Section 3. Section 731.110, Florida Statutes, is amended to  
101 read:

102 731.110 Caveat; proceedings.—

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

111 ~~(2) A caveat shall contain the decedent's social security~~  
112 ~~number, last known residence address, and date of birth, if they~~  
113 ~~are known, as identification, a statement of the interest of the~~  
114 ~~caveator in the estate, the name and specific residence address~~  
115 ~~of the caveator, and, If the caveator, other than a state~~  
116 ~~agency, is a~~ nonresident and is not represented by an attorney

18-00562D-10

20101544

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

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

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

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

138 731.201 General definitions.—Subject to additional  
139 definitions in subsequent chapters that are applicable to  
140 specific chapters or parts, and unless the context otherwise  
141 requires, in this code, in s. 409.9101, and in chapters 736,  
142 738, 739, and 744, the term:

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

18-00562D-10

20101544

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

149 Section 5. Section 731.301, Florida Statutes, is amended to  
150 read:

151 731.301 Notice.—

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

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

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

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

164 732.2125 Right of election; by whom exercisable.—The right  
165 of election may be exercised:

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

172 Section 7. Section 732.401, Florida Statutes, is amended to  
173 read:

174 732.401 Descent of homestead.—

18-00562D-10

20101544

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

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

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

189 1. By the surviving spouse; or

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

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

200 (c) A petition by an attorney in fact or guardian of the  
201 property for approval to make the election tolls the time for  
202 making the election until 6 months after the decedent's death or  
203 30 days after the rendition of an order authorizing the

18-00562D-10

20101544

204 election, whichever occurs last.

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

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

211  
212 ELECTION OF SURVIVING SPOUSE  
213 TO TAKE A ONE-HALF INTEREST OF  
214 DECEDENT'S INTEREST IN HOMESTEAD PROPERTY

215  
216 STATE OF.....

217 COUNTY OF.....

218  
219 1. The decedent, \_\_\_\_\_, died on \_\_\_\_\_ . On  
220 the date of the decedent's death, The decedent was married to  
221 \_\_\_\_\_, who survived the decedent.

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

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

230 4. If affiant is not the surviving spouse, affiant is the  
231 surviving spouse's attorney in fact or guardian of the property  
232 and an order has been rendered by a court having jurisdiction of

18-00562D-10

20101544\_\_

233 the real property authorizing the undersigned to make this  
234 election.

235  
236 .....  
237 ...(Affiant)...  
238

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

241  
242 ...(Signature of Notary Public-State of Florida)...

243  
244 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

245  
246 Personally Known OR Produced Identification

247 ...(Type of Identification Produced)...

248  
249 (3) Unless and until an election is made under subsection  
250 (2), expenses relating to the ownership of the homestead shall  
251 be allocated between the surviving spouse, as life tenant, and  
252 the decedent's descendants, as remaindermen, in accordance with  
253 chapter 738. If an election is made, expenses relating to the  
254 ownership of the homestead shall be allocated between the  
255 surviving spouse and the descendants as tenants in common in  
256 proportion to their respective shares, effective as of the date  
257 the election is filed for recording.

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

261 (5)-(2) This section does ~~Subsection (1)~~ shall not apply to

18-00562D-10

20101544

262 property that the decedent ~~and the surviving spouse~~ owned in  
263 tenancy by the entirety or joint tenancy with rights of  
264 survivorship as tenants by the entirety.

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

267 732.4015 Devise of homestead.—

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

272 Section 9. Section 732.4017, Florida Statutes, is created  
273 to read:

274 732.4017 Inter vivos transfer of homestead property.—

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

284 (2) As used in this section, the term "transfer in trust"  
285 refers to a trust under which the transferor of the homestead  
286 property, alone or in conjunction with another person, does not  
287 possess a right of revocation as that term is defined in s.  
288 733.707(3)(e). A power possessed by the transferor which is  
289 exercisable during the transferor's lifetime to alter the  
290 beneficial use and enjoyment of the interest within a class of

18-00562D-10

20101544

291 beneficiaries identified only in the trust instrument is not a  
292 right of revocation if the power may not be exercised in favor  
293 of the transferor, the transferor's creditors, the transferor's  
294 estate, or the creditors of the transferor's estate or exercised  
295 to discharge the transferor's legal obligations. This subsection  
296 does not create an inference that a power not described in this  
297 subsection is a power to revoke or revest an interest in the  
298 transferor.

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

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

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

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

319 (4) It is the intent of the Legislature that this section

18-00562D-10

20101544

320 clarify existing law.

321 Section 10. Section 732.608, Florida Statutes, is amended  
322 to read:

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

331 Section 11. Section 732.805, Florida Statutes, is created  
332 to read:

333 732.805 Spousal rights procured by fraud, duress, or undue  
334 influence.—

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

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

346 (b) Any rights or benefits under a bond, life insurance  
347 policy, or other contractual arrangement if the decedent is the  
348 principal obligee or the person upon whose life the policy is

18-00562D-10

20101544

349 issued, unless the surviving spouse is provided for by name,  
350 whether or not designated as the spouse, in the bond, life  
351 insurance policy, or other contractual arrangement.

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

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

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

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

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

374 (5) In all actions brought under this section, the court  
375 shall award taxable costs as in chancery actions, including  
376 attorney's fees. When awarding taxable costs and attorney's  
377 fees, the court may direct payment from a party's interest, if

18-00562D-10

20101544

378 any, in the estate, or enter a judgment that may be satisfied  
379 from other property of the party, or both.

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

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

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

394 Section 12. Section 733.2123, Florida Statutes, is amended  
395 to read:

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

406 Section 13. Subsection (4) of section 733.608, Florida

18-00562D-10

20101544

407 Statutes, is amended to read:

408 733.608 General power of the personal representative.—

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

423 (a) The name and address of the personal representative and  
424 the personal representative's attorney;

425 (b) The legal description of the property;

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

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

434  
435 Substantial compliance with the foregoing provisions renders

18-00562D-10

20101544

436 ~~shall render~~ the notice in comportment with this section.

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

439 735.203 Petition for summary administration.—

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

447 However, formal notice of the petition must be served on a Any  
448 beneficiary not joining in ~~shall be served by formal notice with~~  
449 the petition.

450 (3) If each trustee of a trust that is a beneficiary of the  
451 estate of the deceased person is also a petitioner, formal  
452 notice of the petition for summary administration shall be  
453 served on each qualified beneficiary of the trust as defined in  
454 s. 736.0103 ~~shall be served by formal notice with the petition~~  
455 ~~for summary administration~~ unless joinder in, or consent to, the  
456 petition is obtained from each qualified beneficiary of the  
457 trust.

458 Section 15. Section 736.1102, Florida Statutes, is amended  
459 to read:

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

18-00562D-10

20101544

465 when determining whether class gift terminology and terms of  
466 relationship include adopted persons and persons born out of  
467 wedlock.

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

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

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

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