

HB 401

2012

1 A bill to be entitled
2 An act relating to effect of dissolution or annulment
3 of marriage on certain designations; creating s.
4 732.703, F.S.; providing definitions; providing that a
5 designation made by or on behalf of a decedent
6 providing for the payment or transfer at death of an
7 interest in an asset to or for the benefit of the
8 decedent's former spouse shall become void if the
9 decedent's marriage was judicially dissolved or
10 declared invalid before the decedent's death, if the
11 designation was made prior to the dissolution or
12 order; providing for disposition of assets; providing
13 for treatment of certain retirement plans; specifying
14 assets subject to provisions; providing exceptions;
15 providing that payors are not liable for payments or
16 transfers to beneficiaries contrary to this provision
17 in certain circumstances; specifying the form of an
18 affidavit that may be used to relieve a payor of
19 liability for a transfer if the death certificate is
20 silent as to the decedent's marital status at the time
21 of death; providing that the payor is not liable for
22 making any payment on account of, or transferring any
23 interest in, certain types of assets to a beneficiary;
24 providing that certain provisions apply
25 notwithstanding the payor's knowledge that the person
26 to whom the asset is transferred is different from the
27 person who would own the interest due to the
28 dissolution of the decedent's marriage or declaration

Page 1 of 11

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

hb0401-00

HB 401

2012

29 of the marriage's validity before the decedent's
30 death; providing that the provisions do not affect
31 specified interests and rights; creating ss. 765.2021
32 and 765.3031, F.S.; providing that a spouse's
33 authority as a health care surrogate or a surrogate
34 under a living will, respectively, terminates upon the
35 dissolution or annulment of the marriage, unless the
36 document or the final judgment of dissolution provides
37 otherwise; providing for the administration of the
38 declaration of health care surrogacy or living will
39 after the dissolution or annulment; providing
40 applicability; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 732.703, Florida Statutes, is created
45 to read:

46 732.703 Effect of divorce, dissolution, or invalidity of
47 marriage on disposition of certain assets at death.-

48 (1) As used in this section, unless the context requires
49 otherwise, the term:

50 (a) "Asset," when not modified by other words or phrases,
51 means an asset described in subsection (3).

52 (b) "Beneficiary" means any person designated in a
53 governing instrument to receive an interest in an asset upon the
54 death of the decedent.

55 (c) "Death certificate" means a certified copy of a death
56 certificate issued by an official or agency for the place where
57 the decedent's death occurred.

58 (d) "Employee benefit plan" means any funded or unfunded
59 plan, program, or fund established by an employer to provide an
60 employee's beneficiaries with benefits that may be payable on
61 the employee's death.

62 (e) "Governing instrument" means any writing or contract
63 governing the disposition of all or any part of an asset upon
64 the death of the decedent.

65 (f) "Payor" means any person obligated to make payment of
66 the decedent's interest in an asset upon the death of the
67 decedent, and any other person who is in control or possession
68 of an asset.

69 (g) "Primary beneficiary" means a beneficiary designated
70 under the governing instrument to receive an interest in an
71 asset upon the death of the decedent who is not a secondary
72 beneficiary. A person who receives an interest in the asset upon
73 the death of the decedent due to the death of another
74 beneficiary prior to the decedent's death is also a primary
75 beneficiary.

76 (h) "Secondary beneficiary" means a beneficiary designated
77 under the governing instrument who will receive an interest in
78 an asset if the designation of the primary beneficiary is
79 revoked or otherwise cannot be given effect.

80 (2) A designation made by or on behalf of the decedent
81 providing for the payment or transfer at death of an interest in
82 an asset to or for the benefit of the decedent's former spouse

HB 401

2012

83 is void as of the time the decedent's marriage was judicially
84 dissolved or declared invalid by court order prior to the
85 decedent's death, if the designation was made prior to the
86 dissolution or court order. The decedent's interest in the asset
87 shall pass as if the decedent's former spouse predeceased the
88 decedent. An individual retirement account described in s. 408
89 or s. 408A of the Internal Revenue Code of 1986, or an employee
90 benefit plan, may not be treated as a trust for purposes of this
91 section.

92 (3) Subsection (2) applies to the following assets in
93 which a resident of this state has an interest at the time of
94 the resident's death:

95 (a) A life insurance policy, qualified annuity, or other
96 similar tax-deferred contract held within an employee benefit
97 plan.

98 (b) An employee benefit plan.

99 (c) An individual retirement account described in s. 408
100 or s. 408A of the Internal Revenue Code of 1986, including an
101 individual retirement annuity described in s. 408(b) of the
102 Internal Revenue Code of 1986.

103 (d) A payable-on-death account.

104 (e) A security or other account registered in a transfer-
105 on-death form.

106 (f) A life insurance policy, annuity, or other similar
107 contract that is not held within an employee benefit plan or a
108 tax-qualified retirement account.

109 (4) Subsection (2) does not apply:

HB 401

2012

110 (a) To the extent that controlling federal law provides
111 otherwise;

112 (b) If the governing instrument is signed by the decedent,
113 or on behalf of the decedent, after the order of dissolution or
114 order declaring the marriage invalid and such governing
115 instrument expressly provides that benefits will be payable to
116 the decedent's former spouse;

117 (c) To the extent a will or trust governs the disposition
118 of the assets and s. 732.507(2) or s. 736.1005 applies;

119 (d) If the order of dissolution or order declaring the
120 marriage invalid requires that the decedent acquire or maintain
121 the asset for the benefit of a former spouse or children of the
122 marriage, payable upon the death of the decedent either outright
123 or in trust, only if other assets of the decedent fulfilling
124 such a requirement for the benefit of the former spouse or
125 children of the marriage do not exist upon the death of the
126 decedent;

127 (e) If, under the terms of the order of dissolution or
128 order declaring the marriage invalid, the decedent could not
129 have unilaterally terminated or modified the ownership of the
130 asset, or its disposition upon the death of the decedent;

131 (f) If the designation of the decedent's former spouse as
132 a beneficiary is irrevocable under applicable law;

133 (g) If the instrument directing the disposition of the
134 asset at death is governed by the laws of a state other than
135 this state;

HB 401

2012

136 (h) To an asset held in two or more names as to which the
137 death of one coowner vests ownership of the asset in the
138 surviving coowner or coowners; or

139 (i) If the decedent remarries the person whose interest
140 would otherwise have been revoked under this section and the
141 decedent and that person are married to one another at the time
142 of the decedent's death.

143 (5) In the case of an asset described in paragraph (3) (a),
144 paragraph (3) (b), or paragraph (3) (c), unless payment or
145 transfer would violate a court order directed to, and served as
146 required by law on, the payor:

147 (a) If the governing instrument does not explicitly
148 specify the relationship of the beneficiary to the decedent or
149 if the governing instrument explicitly provides that the
150 beneficiary is not the decedent's spouse, the payor is not
151 liable for making any payment on account of, or transferring any
152 interest in, the asset to the beneficiary.

153 (b) As to any portion of the asset required by the
154 governing instrument to be paid after the decedent's death to a
155 primary beneficiary explicitly designated in the governing
156 instrument as the decedent's spouse:

157 1. If the death certificate states that the decedent was
158 married at the time of his or her death to that spouse, the
159 payor is not liable for making a payment on account of, or for
160 transferring an interest in, that portion of the asset to such
161 primary beneficiary.

162 2. If the death certificate states that the decedent was
163 not married at the time of his or her death, or if the death

164 certificate states that the decedent was married to a person
 165 other than the spouse designated as the primary beneficiary at
 166 the time of his or her death, the payor is not liable for making
 167 a payment on account of, or for transferring an interest in,
 168 that portion of the asset to a secondary beneficiary under the
 169 governing instrument.

170 3. If the death certificate is silent as to the decedent's
 171 marital status at the time of his or her death, the payor is not
 172 liable for making a payment on account of, or for transferring
 173 an interest in, that portion of the asset to the primary
 174 beneficiary upon delivery to the payor of an affidavit validly
 175 executed by the primary beneficiary in substantially the
 176 following form:

177
 178 STATE OF _____
 179 COUNTY OF _____

180 Before me, the undersigned authority, personally
 181 appeared ... (type or print affiant's name)...
 182 ("Affiant"), who swore or affirmed that:

183 1. ... (Type or print name of decedent)...
 184 ("Decedent") died on ... (type or print the date of the
 185 Decedent's death)....

186 2. Affiant is a "primary beneficiary" as that
 187 term is defined in Section 732.703, Florida Statutes.
 188 Affiant and Decedent were married on ... (type or print
 189 the date of marriage)..., and were legally married to
 190 one another on the date of the Decedent's death.

191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217

...(Affiant)...

Sworn to or affirmed before me by the affiant who
is personally known to me or who has produced
...(state type of identification)... as identification
this day of ...(month)..., ...(year)....
...(Signature of Officer)...
...(Print, Type, or Stamp Commissioned name of Notary
Public)...

4. If the death certificate is silent as to the decedent's
marital status at the time of his or her death, the payor is not
liable for making a payment on account of, or for transferring
an interest in, that portion of the asset to the secondary
beneficiary upon delivery to the payor of an affidavit validly
executed by the secondary beneficiary affidavit in substantially
the following form:

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally
appeared ...(type or print affiant's name)...
("Affiant"), who swore or affirmed that:
1. ...(Type or print name of decedent)...
("Decedent") died on ...(type or print the date of the
Decedent's death)....

218 2. Affiant is a "secondary beneficiary" as that
 219 term is defined in Section 732.703, Florida Statutes.
 220 On the date of the Decedent's death, the Decedent was
 221 not legally married to the spouse designated as the
 222 "primary beneficiary" as that term is defined in
 223 Section 732.703, Florida Statutes.

224 Sworn to or affirmed before me by the affiant who
 225 is personally known to me or who has produced
 226 ...(state type of identification)... as identification
 227 this day of ...(month)..., ...(year)....
 228 ...(Signature of Officer)...
 229 ...(Print, Type, or Stamp Commissioned name of Notary
 230 Public)...

232 (6) In the case of an asset described in paragraph (3) (d),
 233 paragraph (3) (e), or paragraph (3) (f), the payor is not liable
 234 for making any payment on account of, or transferring any
 235 interest in, the asset to any beneficiary.

236 (7) Subsections (5) and (6) apply notwithstanding the
 237 payor's knowledge that the person to whom the asset is
 238 transferred is different from the person who would own the
 239 interest pursuant to subsection (2).

240 (8) This section does not affect the ownership of an
 241 interest in an asset as between the former spouse and any other
 242 person entitled to such interest by operation of this section,
 243 the rights of any purchaser for value of any such interest, the
 244 rights of any creditor of the former spouse or any other person
 245 entitled to such interest, or the rights and duties of any

246 insurance company, financial institution, trustee,
 247 administrator, or other third party.

248 (9) This section applies to all designations made by or on
 249 behalf of decedents dying on or after July 1, 2012, regardless
 250 of when the designation was made.

251 Section 2. Section 765.2021, Florida Statutes, is created
 252 to read:

253 765.2021 Termination of authority upon dissolution of
 254 marriage.—

255 (1) Upon the dissolution or annulment of a marriage, a
 256 former spouse's authority as a health care surrogate terminates
 257 upon the dissolution or annulment of the marriage, unless the
 258 document or the final judgment of dissolution or annulment
 259 provides otherwise. After the dissolution or annulment, the
 260 document designating a health care surrogate shall be
 261 administered as if the former spouse predeceased the other
 262 spouse and is therefore unable to perform his or her duties. The
 263 remainder of the document shall be unaffected.

264 (2) This section applies to all final judgments of
 265 dissolution or annulment entered on or after July 1, 2012.

266 Section 3. Section 765.3031, Florida Statutes, is created
 267 to read:

268 765.3031 Termination of authority upon dissolution of
 269 marriage.—

270 (1) Upon the dissolution or annulment of a marriage, a
 271 former spouse's authority as a surrogate for the other spouse
 272 under a living will terminates upon the dissolution or annulment
 273 of the marriage, unless the document or the final judgment of

HB 401

2012

274 dissolution or annulment provides otherwise. After the
275 dissolution or annulment, the living will shall be administered
276 as if the former spouse predeceased the other spouse, and the
277 remainder of the document shall be unaffected.

278 (2) This section applies to all final judgments of
279 dissolution or annulment entered on or after July 1, 2012.

280 Section 4. This act shall take effect July 1, 2012.