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HB 733

2012 Legislature

1  
2 An act relating to probate; amending s. 731.201, F.S.;  
3 excluding real property owned in tenancy by the  
4 entireties or in joint tenancy with rights of  
5 survivorship from the definition of the term  
6 "protected homestead"; clarifying the application of  
7 amendments to s. 732.102, F.S., made by chapter 2011-  
8 183, Laws of Florida, relating to a spouse's share of  
9 an intestate estate; amending s. 732.401, F.S.;  
10 revising the period of time during which an attorney  
11 in fact or guardian of the property of a surviving  
12 spouse may petition for approval to elect to take a  
13 one-half interest in the decedent's homestead;  
14 specifying the minimum duration of an extension of  
15 time; creating s. 732.1081, F.S.; barring inheritance  
16 rights of a natural or adoptive parent whose parental  
17 rights have been previously terminated pursuant to  
18 law; providing for application of the act; providing  
19 effective dates.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Effective July 1, 2012, and applicable to  
24 proceedings pending before or commenced on or after July 1,  
25 2012, subsection (33) of section 731.201, Florida Statutes, is  
26 amended to read:

27 731.201 General definitions.—Subject to additional  
28 definitions in subsequent chapters that are applicable to

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29 specific chapters or parts, and unless the context otherwise  
30 requires, in this code, in s. 409.9101, and in chapters 736,  
31 738, 739, and 744, the term:

32 (33) "Protected homestead" means the property described in  
33 s. 4(a)(1), Art. X of the State Constitution on which at the  
34 death of the owner the exemption inures to the owner's surviving  
35 spouse or heirs under s. 4(b), Art. X of the State Constitution.  
36 For purposes of the code, real property owned in tenancy by the  
37 entireties or in joint tenancy with rights of survivorship ~~as~~  
38 ~~tenants by the entirety~~ is not protected homestead.

39 Section 2. Notwithstanding section 2 or section 14 of  
40 chapter 2011-183, Laws of Florida, the amendments to section  
41 732.102, Florida Statutes, made by section 2 of that act apply  
42 only to the estates of decedents dying on or after October 1,  
43 2011.

44 Section 3. Effective July 1, 2012, and applicable only to  
45 estates of persons dying on or after July 1, 2012, section  
46 732.401, Florida Statutes, is amended to read:

47 732.401 Descent of homestead.—

48 (1) If not devised as authorized by law and the  
49 constitution, the homestead shall descend in the same manner as  
50 other intestate property; but if the decedent is survived by a  
51 spouse and one or more descendants, the surviving spouse shall  
52 take a life estate in the homestead, with a vested remainder to  
53 the descendants in being at the time of the decedent's death per  
54 stirpes.

55 (2) In lieu of a life estate under subsection (1), the  
56 surviving spouse may elect to take an undivided one-half

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57 | interest in the homestead as a tenant in common, with the  
58 | remaining undivided one-half interest vesting in the decedent's  
59 | descendants in being at the time of the decedent's death, per  
60 | stirpes.

61 | (a) The right of election may be exercised:

62 | 1. By the surviving spouse; or

63 | 2. With the approval of a court having jurisdiction of the  
64 | real property, by an attorney in fact or guardian of the  
65 | property of the surviving spouse. Before approving the election,  
66 | the court shall determine that the election is in the best  
67 | interests of the surviving spouse during the spouse's probable  
68 | lifetime.

69 | (b) The election must be made within 6 months after the  
70 | decedent's death and during the surviving spouse's lifetime. The  
71 | time for making the election may not be extended except as  
72 | provided in paragraph (c).

73 | (c) A petition by an attorney in fact or by a guardian of  
74 | the property of the surviving spouse for approval to make the  
75 | election must be filed within 6 months after the decedent's  
76 | death and during the surviving spouse's lifetime. If the  
77 | petition is timely filed, the time for making the election shall  
78 | be extended for at least 30 days after the rendition of the  
79 | order allowing the election ~~tolls the time for making the~~  
80 | ~~election until 6 months after the decedent's death or 30 days~~  
81 | ~~after the rendition of an order authorizing the election,~~  
82 | ~~whichever occurs last.~~

83 | (d) Once made, the election is irrevocable.

84 | (e) The election shall be made by filing a notice of

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85 | election containing the legal description of the homestead  
86 | property for recording in the official record books of the  
87 | county or counties where the homestead property is located. The  
88 | notice must be in substantially the following form:

89 |  
90 |                                   ELECTION OF SURVIVING SPOUSE  
91 |                                   TO TAKE A ONE-HALF INTEREST OF  
92 |                                   DECEDENT'S INTEREST IN  
93 |                                   HOMESTEAD PROPERTY

94 |  
95 | STATE OF.....

96 | COUNTY OF.....

97 |           1. The decedent, ....., died on .....  
98 | On the date of the decedent's death, The decedent was married to  
99 | ....., who survived the decedent.

100 |           2. At the time of the decedent's death, the decedent owned  
101 | an interest in real property that the affiant believes to be  
102 | homestead property described in s. 4, Article X of the State  
103 | Constitution, which ~~that~~ real property being in ..... County,  
104 | Florida, and described as: ...(description of homestead  
105 | property)....

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

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

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113  
114 .....  
115 ... (Affiant) ...  
116

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

119  
120 ... (Signature of Notary Public-State of Florida) ...

121  
122 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
123

124 Personally Known OR Produced Identification

125 ... (Type of Identification Produced) ...

126 (3) Unless and until an election is made under subsection  
127 (2), expenses relating to the ownership of the homestead shall  
128 be allocated between the surviving spouse, as life tenant, and  
129 the decedent's descendants, as remaindermen, in accordance with  
130 chapter 738. If an election is made, expenses relating to the  
131 ownership of the homestead shall be allocated between the  
132 surviving spouse and the descendants as tenants in common in  
133 proportion to their respective shares, effective as of the date  
134 the election is filed for recording.

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

138 (5) This section does not apply to property that the  
139 decedent owned in tenancy by the entirety or in joint tenancy  
140 with rights of survivorship.

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141 Section 4. Effective July 1, 2012, and applicable only to  
142 estates of persons dying on or after July 1, 2012, section  
143 732.1081, Florida Statutes, is created to read:

144 732.1081 Termination of parental rights.—For the purpose  
145 of intestate succession by a natural or adoptive parent, a  
146 natural or adoptive parent is barred from inheriting from or  
147 through a child if the natural or adoptive parent's parental  
148 rights were terminated pursuant to chapter 39 prior to the death  
149 of the child, and the natural or adoptive parent shall be  
150 treated as if the parent predeceased the child.

151 Section 5. Except as otherwise expressly provided in this  
152 act, this act shall take effect upon becoming a law.