

By Senator Berman

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1                                   A bill to be entitled  
2       An act relating to decedents' property; creating s.  
3       689.151, F.S.; defining the terms "ownership  
4       document," "personal property," and "record";  
5       abolishing certain common law requirements relating to  
6       joint tenancies with right of survivorship and  
7       tenancies by the entirety; providing for the creation  
8       of joint tenancies with right of survivorship and  
9       tenancies by the entirety; specifying that there are  
10      certain rebuttable presumptions for personal property  
11      owned by both spouses and joint tenancies with right  
12      of survivorship; providing that the presumption may be  
13      overcome by a preponderance of the evidence or by  
14      clear and convincing evidence under certain  
15      circumstances; providing for the conclusive  
16      presumption of an intent to create a tenancy by the  
17      entirety; providing applicability; providing  
18      construction; providing retroactive application;  
19      creating s. 731.1065, F.S.; specifying that precious  
20      metals are tangible personal property for the purposes  
21      of the Florida Probate Code; providing for retroactive  
22      application; amending s. 731.301, F.S.; specifying  
23      that formal notice is not sufficient to invoke a  
24      court's personal jurisdiction over a person receiving  
25      such formal notice; providing applicability; amending  
26      s. 733.610, F.S.; expanding the list of sales or  
27      encumbrances that are voidable by interested persons  
28      under certain circumstances; amending s. 733.617,  
29      F.S.; specifying that certain attorneys and persons

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30 are not entitled to compensation for serving as a  
31 personal representative unless the attorney or person  
32 is related to the testator or unless certain  
33 disclosures are made before a will is executed;  
34 requiring the testator to execute a written statement  
35 that acknowledges certain disclosures were made;  
36 providing requirements for the written statement;  
37 specifying when an attorney is deemed to have prepared  
38 or supervised the execution of a will; specifying how  
39 a person may be related to an individual; specifying  
40 when an attorney or person related to the attorney is  
41 deemed to have been nominated in a will; providing  
42 construction; providing applicability; amending s.  
43 736.0708, F.S.; specifying that certain attorneys and  
44 persons are not entitled to compensation for serving  
45 as a trustee unless the attorney or person is related  
46 to the settlor or unless certain disclosures are made  
47 before the trust instrument is executed; requiring a  
48 settlor to execute a written statement that  
49 acknowledges certain disclosures were made; providing  
50 requirements for the written statement; specifying  
51 when an attorney is deemed to have prepared or  
52 supervised the execution of a trust instrument;  
53 specifying how a person may be related to an  
54 individual; specifying when an attorney or a person  
55 related to the attorney is deemed appointed in a trust  
56 instrument; providing construction; providing  
57 applicability; providing effective dates.

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

60  
61 Section 1. Section 689.151, Florida Statutes, is created to  
62 read:

63 689.151 Tenancies by the entirety, joint tenancies with  
64 right of survivorship, and tenancies in common in personal  
65 property.-

66 (1) As used in this section:

67 (a) "Ownership document" means an instrument or a record of  
68 transfer or an instrument or a record evidencing ownership.

69 (b) "Personal property" means all property except real  
70 property, as defined in s. 192.001(12), and an interest in a  
71 trust to which chapter 736 applies.

72 (c) "Record" has the same meaning as in s. 605.0102.

73 (2) With respect to joint tenancies with right of  
74 survivorship and tenancies by the entirety in personal property,  
75 the common law requirements of unity of time and title are  
76 abolished.

77 (a) A joint tenancy with right of survivorship in personal  
78 property may be created in the existing owner and one or more  
79 other persons through a direct transfer by the existing owner.

80 (b) A tenancy by the entirety may be created in personal  
81 property owned by one spouse through a direct transfer to both  
82 spouses.

83 (3) With respect to joint tenancies with right of  
84 survivorship in personal property, the common law requirement of  
85 unity of interest is abolished and the shares or interests of  
86 joint tenants may be equal or unequal.

87 (4) There is a rebuttable presumption that:

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88 (a) Personal property owned by both spouses is owned by the  
89 spouses as tenants by the entirety if:

90 1. An ownership document does not specify a form of  
91 ownership or does not expressly indicate that a tenancy by the  
92 entirety is not intended; or

93 2. There is a designation of joint tenancy with right of  
94 survivorship in an ownership document and no express indication  
95 that a tenancy by the entirety was not intended.

96  
97 The rebuttable presumptions in this paragraph also apply when an  
98 owner of personal property adds the name of his or her spouse to  
99 such ownership document.

100 (b) Except as provided in paragraph (a), personal property  
101 is owned as joint tenants with right of survivorship when the  
102 owner designates or adds the name of one or more persons in an  
103 ownership document indicating that the owner and such persons  
104 own or hold the property as joint tenants with right of  
105 survivorship.

106 (c) The shares or interests held by joint tenants with  
107 right of survivorship or tenants in common in personal property  
108 are equal. Such presumption may be overcome by proving by a  
109 preponderance of the evidence the existence of fraud, undue  
110 influence, lack of capacity, or contrary intent.

111 (5) Unless otherwise stated, the rebuttable presumptions  
112 established in subsection (4) may be overcome by proving by a  
113 preponderance of the evidence the existence of fraud, undue  
114 influence, or lack of capacity or by proving by clear and  
115 convincing evidence that the presumed tenancy was not intended  
116 or created.

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117       (6) The intent to create a tenancy by the entirety is  
118 conclusively presumed when such a tenancy is designated by  
119 spouses in an ownership document for personal property, or when  
120 an owner of personal property adds the name of his or her spouse  
121 to an ownership document with a designation of tenancy by the  
122 entirety, if the designation or addition was not the product of  
123 fraud, undue influence, or a lack of capacity.

124       (7) This section does not affect the application of s.  
125 319.22, s. 655.78, s. 655.79, s. 655.80, s. 655.82, s. 689.115,  
126 or ss. 711.50-711.512.

127       (8) The common law of joint tenancies with right of  
128 survivorship and the common law of tenancies by the entirety  
129 supplement this section except to the extent modified by it.

130       (9) The presumptions under this section apply to all  
131 proceedings pending on or before October 1, 2019, and to all  
132 proceedings commenced on or after October 1, 2019.

133       (10) Subsections (2) and (3) are remedial in nature and  
134 apply to transactions occurring before October 1, 2019, to the  
135 extent that those transactions relate to the existence of a  
136 joint tenancy with right of survivorship or a tenancy by the  
137 entirety on October 1, 2019; however, such application may not  
138 impair any right acquired before October 1, 2019, if that right  
139 is confirmed in a judicial proceeding commenced within 2 years  
140 after October 1, 2019.

141       (11) This section does not impair the rights of any  
142 lienholder or creditor acquired before October 1, 2019.

143       Section 2. Effective July 1, 2019, section 731.1065,  
144 Florida Statutes, is created to read:

145       731.1065 Precious metals.—

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146 (1) For the purposes of the code, precious metals in any  
147 tangible form, such as bullion or coins kept and acquired for  
148 their historical, artistic, collectable, or investment value  
149 apart from their normal use as legal tender for payment, are  
150 tangible personal property.

151 (2) This section is intended to clarify existing law and  
152 applies retroactively to all written instruments executed  
153 before, on, or after July 1, 2019, as well as all proceedings  
154 pending or commenced before, on, or after July 1, 2019, in which  
155 the disposition of precious metals in any tangible form has not  
156 been finally determined.

157 Section 3. Effective upon this act becoming a law,  
158 subsection (2) of section 731.301, Florida Statutes, is amended  
159 to read:

160 731.301 Notice.—

161 (2) In a probate proceeding, formal notice is sufficient to  
162 acquire jurisdiction over the person receiving formal notice to  
163 the extent of the person's interest in the estate or in the  
164 decedent's protected homestead. Formal notice is not sufficient  
165 to invoke the court's personal jurisdiction over the person  
166 receiving formal notice.

167 Section 4. The amendment made by this act to s. 731.301,  
168 Florida Statutes, applies to all proceedings pending on or  
169 before, or commenced after, the date this act becomes a law.

170 Section 5. Effective July 1, 2019, section 733.610, Florida  
171 Statutes, is amended to read:

172 733.610 Sale, encumbrance, or transaction involving  
173 conflict of interest.—Any sale or encumbrance to the personal  
174 representative or the personal representative's spouse, agent,

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175 or attorney, or any corporation, other entity, or trust in which  
176 the personal representative, or the personal representative's  
177 spouse, agent, or attorney, has a substantial beneficial or  
178 ownership interest, or any transaction that is affected by a  
179 conflict of interest on the part of the personal representative,  
180 is voidable by any interested person except one who has  
181 consented after fair disclosure, unless:

182 (1) The will or a contract entered into by the decedent  
183 expressly authorized the transaction; or

184 (2) The transaction is approved by the court after notice  
185 to interested persons.

186 Section 6. Subsection (6) of section 733.617, Florida  
187 Statutes, is amended, and subsection (8) is added to that  
188 section, to read:

189 733.617 Compensation of personal representative.—

190 (6) Except as otherwise provided in this section, if the  
191 personal representative is a member of The Florida Bar and has  
192 rendered legal services in connection with the administration of  
193 the estate, then in addition to a fee as personal  
194 representative, there also shall be allowed a fee for the legal  
195 services rendered.

196 (8) (a) An attorney serving as a personal representative, or  
197 a person related to the attorney, is not entitled to  
198 compensation for serving as a personal representative if the  
199 attorney prepared or supervised the execution of the will that  
200 nominated the attorney or person related to the attorney as  
201 personal representative, unless the attorney or person nominated  
202 is related to the testator, or the attorney makes the following  
203 disclosures to the testator before the will is executed:

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204 1. Subject to certain statutory limitations, most family  
205 members, regardless of their residence, and any other persons  
206 who are residents of Florida, including friends and corporate  
207 fiduciaries, are eligible to serve as a personal representative;

208 2. Any person, including an attorney, who serves as a  
209 personal representative is entitled to receive reasonable  
210 compensation for serving as a personal representative; and

211 3. Compensation payable to the personal representative is  
212 in addition to any attorney fees payable to the attorney or the  
213 attorney's firm for legal services rendered to the personal  
214 representative.

215 (b)1. The testator must execute a written statement  
216 acknowledging that the disclosures required under paragraph (a)  
217 were made prior to the execution of the will. The written  
218 statement must be in a separate writing from the will but may be  
219 annexed to the will. The written statement may be executed  
220 before or after the execution of the will in which the attorney  
221 or related person is nominated as the personal representative.

222 2. The written statement must be in substantially the  
223 following form:

224  
225 I, ...(Name)..., declare that:

226  
227 I have designated my attorney, an attorney employed in the  
228 same law firm as my attorney, or a person related to my attorney  
229 as a nominated personal representative in my will or codicil  
230 dated ...(insert date)....

231  
232 Before executing the will or codicil, I was informed that:



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233 1. Subject to certain statutory limitations, most family  
 234 members, regardless of their residence, and any other  
 235 individuals who are residents of Florida, including friends and  
 236 corporate fiduciaries, are eligible to serve as a personal  
 237 representative.

238 2. Any person, including an attorney, who serves as a  
 239 personal representative is entitled to receive reasonable  
 240 compensation for serving as a personal representative.

241 3. Compensation payable to the personal representative is  
 242 in addition to any attorney fees payable to the attorney or the  
 243 attorney's firm for legal services rendered to the personal  
 244 representative.

246 ...(Signature)...

247 ...(Testator)...

248 ...(Insert date)...

250 (c) For purposes of this subsection:

251 1. An attorney is deemed to have prepared or supervised the  
 252 execution of a will if the preparation or supervision of the  
 253 execution of the will was performed by an employee or attorney  
 254 employed by the same firm as the attorney at the time the will  
 255 was executed.

256 2. A person is "related" to an individual if, at the time  
 257 the attorney prepared or supervised the execution of the will,  
 258 the person is:

259 a. A spouse of the individual;

260 b. A lineal ascendant or descendant of the individual;

261 c. A sibling of the individual;

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- 262 d. A relative of the individual or of the individual's  
263 spouse with whom the attorney maintains a close, familial  
264 relationship;
- 265 e. A spouse of a person described in subparagraphs b.-d.;  
266 f. A person who cohabitates with the individual; or  
267 g. An employee or attorney employed by the same firm as the  
268 attorney at the time the will is executed.
- 269 3. An attorney or a person related to the attorney is  
270 deemed to have been nominated in the will when the will  
271 nominates the attorney or the person related to the attorney as  
272 personal representative, co-personal representative, successor,  
273 or alternate personal representative in the event another person  
274 nominated is unable to or unwilling to serve, or provides the  
275 attorney or any person related to the attorney with the power to  
276 nominate the personal representative and the attorney or person  
277 related to attorney was nominated using that power.
- 278 (d) Other than compensation payable to the personal  
279 representative, this subsection does not limit any rights or  
280 remedies that any interested person may have at law or in  
281 equity.
- 282 (e) The failure to obtain an acknowledgment from the  
283 testator under this subsection does not disqualify a personal  
284 representative from serving and does not affect the validity of  
285 a will.
- 286 (f) This subsection applies to all nominations made  
287 pursuant to a will:
- 288 1. Executed by a resident of this state on or after October  
289 1, 2019; or
- 290 2. Republished by a resident of this state on or after

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291 October 1, 2019, if the republished will nominates the attorney  
292 who prepared or supervised the execution of the instrument that  
293 republished the will, or a person related to such attorney, as  
294 personal representative.

295 Section 7. Subsection (4) is added to section 736.0708,  
296 Florida Statutes, to read:

297 736.0708 Compensation of trustee.-

298 (4) (a) An attorney serving as a trustee or a person related  
299 to such attorney is not entitled to compensation for serving as  
300 trustee if the attorney prepared or supervised the execution of  
301 the trust instrument that appointed the attorney or person  
302 related to the attorney as trustee, unless the attorney or  
303 person appointed is related to the settlor or the attorney makes  
304 the following disclosures to the settlor before the trust  
305 instrument is executed:

306 1. Unless specifically disqualified by the terms of the  
307 trust instrument, any person, regardless of state of residence  
308 and including a family member, friend, or corporate fiduciary,  
309 is eligible to serve as a trustee;

310 2. Any person, including an attorney, who serves as a  
311 trustee is entitled to receive reasonable compensation for  
312 serving as trustee; and

313 3. Compensation payable to the trustee is in addition to  
314 any attorney fees payable to the attorney or the attorney's firm  
315 for legal services rendered to the trustee.

316 (b)1. The settlor must execute a written statement  
317 acknowledging that the disclosures required under paragraph (a)  
318 were made prior to the execution of the trust instrument. The  
319 written statement must be in a separate writing from the trust

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320 instrument but may be annexed to the trust instrument. The  
 321 written statement may be executed before or after the execution  
 322 of the trust in which the attorney or related person is  
 323 appointed as the trustee.

324 2. The written statement must be in substantially the  
 325 following form:

327 I, ...(Name)..., declare that:

329 I have designated my attorney, an attorney employed in the  
 330 same law firm as my attorney, or a person related to my attorney  
 331 as a trustee in my trust instrument dated ...(insert date)....

333 Before executing the trust, I was informed that:

334 1. Unless specifically disqualified by the terms of the  
 335 trust instrument, any person, regardless of state of residence  
 336 and including family members, friends, and corporate  
 337 fiduciaries, is eligible to serve as a trustee.

338 2. Any person, including an attorney, who serves as a  
 339 trustee is entitled to receive reasonable compensation for  
 340 servng as trustee.

341 3. Compensation payable to the trustee is in addition to  
 342 any attorney fees payable to the attorney or the attorney's firm  
 343 for legal services rendered to the trustee.

345 ...(Signature)...

346 ...(Settlor)...

347 ...(Insert Date)...

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349 (c) For purposes of this subsection:

350 1. An attorney is deemed to have prepared, or supervised  
351 the execution of, a trust instrument if the preparation, or  
352 supervision of the execution, of the trust instrument was  
353 performed by an employee or attorney employed by the same firm  
354 as the attorney at the time the trust instrument was executed.

355 2. A person is "related" to an individual if, at the time  
356 the attorney prepared or supervised the execution of the trust  
357 instrument, the person is:

358 a. A spouse of the individual;

359 b. A lineal ascendant or descendant of the individual;

360 c. A sibling of the individual;

361 d. A relative of the individual or of the individual's  
362 spouse with whom the attorney maintains a close, familial  
363 relationship;

364 e. A spouse of a person described in subparagraphs b.-d.;

365 f. A person who cohabitates with the individual; or

366 g. An employee or attorney employed by the same firm as the  
367 attorney at the time the trust instrument is executed.

368 3. An attorney or a person related to the attorney is  
369 deemed appointed in the trust instrument when the trust  
370 instrument appoints the attorney or the person related to the  
371 attorney as trustee, co-trustee, successor, or alternate trustee  
372 in the event another person nominated is unable to or unwilling  
373 to serve, or provides the attorney or any person related to the  
374 attorney with the power to appoint the trustee and the attorney  
375 or person related to attorney was appointed using that power.

376 (d) Other than compensation payable to the trustee, this  
377 subsection does not limit any rights or remedies that any

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378 interested person may have at law or equity.

379 (e) The failure to obtain an acknowledgment from the  
380 settlor under this subsection does not disqualify a trustee from  
381 serving and does not affect the validity of a trust instrument.

382 (f) This subsection applies to all appointments made  
383 pursuant to a trust agreement:

384 1. Executed by a resident of this state on or after October  
385 1, 2019; or

386 2. Amended by a resident of this state on or after October  
387 1, 2019, if the trust agreement nominates the attorney who  
388 prepared or supervised the execution of the amendment or a  
389 person related to such attorney as trustee.

390 Section 8. Except as otherwise expressly provided in this  
391 act and except for this section, which shall take effect upon  
392 this act becoming a law, this act shall take effect October 1,  
393 2019.