

By the Committee on Children, Families, and Elder Affairs; and  
Senator Berman

586-03729-19

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1                                   A bill to be entitled  
2       An act relating to decedents' property; creating s.  
3       731.1065, F.S.; specifying that precious metals are  
4       tangible personal property for the purposes of the  
5       Florida Probate Code; providing for retroactive  
6       application; amending s. 731.301, F.S.; specifying  
7       that formal notice is not sufficient to invoke a  
8       court's personal jurisdiction over a person receiving  
9       such formal notice; providing applicability; amending  
10      s. 733.610, F.S.; expanding the list of sales or  
11      encumbrances that are voidable by interested persons  
12      under certain circumstances; amending s. 733.617,  
13      F.S.; specifying that certain attorneys and persons  
14      are not entitled to compensation for serving as a  
15      personal representative unless the attorney or person  
16      is related to the testator or unless certain  
17      disclosures are made before a will is executed;  
18      requiring the testator to execute a written statement  
19      that acknowledges certain disclosures were made;  
20      providing requirements for the written statement;  
21      specifying when an attorney is deemed to have prepared  
22      or supervised the execution of a will; specifying how  
23      a person may be related to an individual; specifying  
24      when an attorney or person related to the attorney is  
25      deemed to have been nominated in a will; providing  
26      construction; providing applicability; amending s.  
27      736.0708, F.S.; specifying that certain attorneys and  
28      persons are not entitled to compensation for serving  
29      as a trustee unless the attorney or person is related

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30 to the settlor or unless certain disclosures are made  
31 before the trust instrument is executed; requiring a  
32 settlor to execute a written statement that  
33 acknowledges certain disclosures were made; providing  
34 requirements for the written statement; specifying  
35 when an attorney is deemed to have prepared or  
36 supervised the execution of a trust instrument;  
37 specifying how a person may be related to an  
38 individual; specifying when an attorney or a person  
39 related to the attorney is deemed appointed in a trust  
40 instrument; providing construction; providing  
41 applicability; providing effective dates.

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

44  
45 Section 1. Effective July 1, 2019, section 731.1065,  
46 Florida Statutes, is created to read:

47 731.1065 Precious metals.—

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

53 (2) This section is intended to clarify existing law and  
54 applies retroactively to all written instruments executed  
55 before, on, or after July 1, 2019, as well as all proceedings  
56 pending or commenced before, on, or after July 1, 2019, in which  
57 the disposition of precious metals in any tangible form has not  
58 been finally determined.

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59 Section 2. Effective upon this act becoming a law,  
60 subsection (2) of section 731.301, Florida Statutes, is amended  
61 to read:

62 731.301 Notice.—

63 (2) In a probate proceeding, formal notice is sufficient to  
64 acquire jurisdiction over the person receiving formal notice to  
65 the extent of the person's interest in the estate or in the  
66 decedent's protected homestead. Formal notice is not sufficient  
67 to invoke the court's personal jurisdiction over the person  
68 receiving formal notice.

69 Section 3. The amendment made by this act to s. 731.301,  
70 Florida Statutes, applies to all proceedings pending on or  
71 before, or commenced after, the date this act becomes a law.

72 Section 4. Effective July 1, 2019, section 733.610, Florida  
73 Statutes, is amended to read:

74 733.610 Sale, encumbrance, or transaction involving  
75 conflict of interest.—Any sale or encumbrance to the personal  
76 representative or the personal representative's spouse, agent,  
77 or attorney, or any corporation, other entity, or trust in which  
78 the personal representative, or the personal representative's  
79 spouse, agent, or attorney, has a substantial beneficial or  
80 ownership interest, or any transaction that is affected by a  
81 conflict of interest on the part of the personal representative,  
82 is voidable by any interested person except one who has  
83 consented after fair disclosure, unless:

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

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

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88 Section 5. Subsection (6) of section 733.617, Florida  
89 Statutes, is amended, and subsection (8) is added to that  
90 section, to read:

91 733.617 Compensation of personal representative.—

92 (6) Except as otherwise provided in this section, if the  
93 personal representative is a member of The Florida Bar and has  
94 rendered legal services in connection with the administration of  
95 the estate, then in addition to a fee as personal  
96 representative, there also shall be allowed a fee for the legal  
97 services rendered.

98 (8) (a) An attorney serving as a personal representative, or  
99 a person related to the attorney, is not entitled to  
100 compensation for serving as a personal representative if the  
101 attorney prepared or supervised the execution of the will that  
102 nominated the attorney or person related to the attorney as  
103 personal representative, unless the attorney or person nominated  
104 is related to the testator, or the attorney makes the following  
105 disclosures to the testator before the will is executed:

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

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

113 3. Compensation payable to the personal representative is  
114 in addition to any attorney fees payable to the attorney or the  
115 attorney's firm for legal services rendered to the personal  
116 representative.

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117 (b)1. The testator must execute a written statement  
118 acknowledging that the disclosures required under paragraph (a)  
119 were made prior to the execution of the will. The written  
120 statement must be in a separate writing from the will but may be  
121 annexed to the will. The written statement may be executed  
122 before or after the execution of the will in which the attorney  
123 or related person is nominated as the personal representative.

124 2. The written statement must be in substantially the  
125 following form:

126  
127 I, ...(Name)..., declare that:

128  
129 I have designated my attorney, an attorney employed in the  
130 same law firm as my attorney, or a person related to my attorney  
131 as a nominated personal representative in my will or codicil  
132 dated ...(insert date)....

133  
134 Before executing the will or codicil, I was informed that:

135 1. Subject to certain statutory limitations, most family  
136 members, regardless of their residence, and any other  
137 individuals who are residents of Florida, including friends and  
138 corporate fiduciaries, are eligible to serve as a personal  
139 representative.

140 2. Any person, including an attorney, who serves as a  
141 personal representative is entitled to receive reasonable  
142 compensation for serving as a personal representative.

143 3. Compensation payable to the personal representative is  
144 in addition to any attorney fees payable to the attorney or the  
145 attorney's firm for legal services rendered to the personal

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146 representative.

147

148 ...(Signature)...

149 ...(Testator)...

150 ...(Insert date)...

151

152 (c) For purposes of this subsection:

153 1. An attorney is deemed to have prepared or supervised the  
 154 execution of a will if the preparation or supervision of the  
 155 execution of the will was performed by an employee or attorney  
 156 employed by the same firm as the attorney at the time the will  
 157 was executed.

158 2. A person is "related" to an individual if, at the time  
 159 the attorney prepared or supervised the execution of the will,  
 160 the person is:

161 a. A spouse of the individual;

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

163 c. A sibling of the individual;

164 d. A relative of the individual or of the individual's  
 165 spouse with whom the attorney maintains a close, familial  
 166 relationship;

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

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

169 g. An employee or attorney employed by the same firm as the  
 170 attorney at the time the will is executed.

171 3. An attorney or a person related to the attorney is  
 172 deemed to have been nominated in the will when the will  
 173 nominates the attorney or the person related to the attorney as  
 174 personal representative, co-personal representative, successor,

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175 or alternate personal representative in the event another person  
176 nominated is unable to or unwilling to serve, or provides the  
177 attorney or any person related to the attorney with the power to  
178 nominate the personal representative and the attorney or person  
179 related to attorney was nominated using that power.

180 (d) Other than compensation payable to the personal  
181 representative, this subsection does not limit any rights or  
182 remedies that any interested person may have at law or in  
183 equity.

184 (e) The failure to obtain an acknowledgment from the  
185 testator under this subsection does not disqualify a personal  
186 representative from serving and does not affect the validity of  
187 a will.

188 (f) This subsection applies to all nominations made  
189 pursuant to a will:

190 1. Executed by a resident of this state on or after October  
191 1, 2019; or

192 2. Republished by a resident of this state on or after  
193 October 1, 2019, if the republished will nominates the attorney  
194 who prepared or supervised the execution of the instrument that  
195 republished the will, or a person related to such attorney, as  
196 personal representative.

197 Section 6. Subsection (4) is added to section 736.0708,  
198 Florida Statutes, to read:

199 736.0708 Compensation of trustee.—

200 (4) (a) An attorney serving as a trustee or a person related  
201 to such attorney is not entitled to compensation for serving as  
202 trustee if the attorney prepared or supervised the execution of  
203 the trust instrument that appointed the attorney or person

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204 related to the attorney as trustee, unless the attorney or  
205 person appointed is related to the settlor or the attorney makes  
206 the following disclosures to the settlor before the trust  
207 instrument is executed:

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

212 2. Any person, including an attorney, who serves as a  
213 trustee is entitled to receive reasonable compensation for  
214 servicing as trustee; and

215 3. Compensation payable to the trustee is in addition to  
216 any attorney fees payable to the attorney or the attorney's firm  
217 for legal services rendered to the trustee.

218 (b)1. The settlor must execute a written statement  
219 acknowledging that the disclosures required under paragraph (a)  
220 were made prior to the execution of the trust instrument. The  
221 written statement must be in a separate writing from the trust  
222 instrument but may be annexed to the trust instrument. The  
223 written statement may be executed before or after the execution  
224 of the trust in which the attorney or related person is  
225 appointed as the trustee.

226 2. The written statement must be in substantially the  
227 following form:

228  
229 I, ... (Name) ..., declare that:

230  
231 I have designated my attorney, an attorney employed in the  
232 same law firm as my attorney, or a person related to my attorney



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233 as a trustee in my trust instrument dated ...(insert date)....

234

235 Before executing the trust, I was informed that:

236 1. Unless specifically disqualified by the terms of the  
 237 trust instrument, any person, regardless of state of residence  
 238 and including family members, friends, and corporate  
 239 fiduciaries, is eligible to serve as a trustee.

240 2. Any person, including an attorney, who serves as a  
 241 trustee is entitled to receive reasonable compensation for  
 242 serving as trustee.

243 3. Compensation payable to the trustee is in addition to  
 244 any attorney fees payable to the attorney or the attorney's firm  
 245 for legal services rendered to the trustee.

246

247 ...(Signature)...

248 ...(Settlor)...

249 ...(Insert Date)...

250

251 (c) For purposes of this subsection:

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

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

260 a. A spouse of the individual;

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

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

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291 person related to such attorney as trustee.

292       Section 7. Except as otherwise expressly provided in this  
293 act and except for this section, which shall take effect upon  
294 this act becoming a law, this act shall take effect October 1,  
295 2019.