

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
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.
 58

59 Be It Enacted by the Legislature of the State of Florida:
 60

61 Section 1. Section 689.151, Florida Statutes, is created
 62 to 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
 68 of 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:

88 (a) Personal property owned by both spouses is owned by
89 the 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.

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.—

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
162 to acquire jurisdiction over the person receiving formal notice
163 to 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,
171 Florida 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,
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,
197 | or 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:

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
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250

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

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

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

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

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

...(Signature)...

...(Testator)...

...(Insert date)...

(c) For purposes of this subsection:

251 1. An attorney is deemed to have prepared or supervised
252 the 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;

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
268 the 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
289 October 1, 2019; or

290 2. Republished by a resident of this state on or after
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
299 related to such attorney is not entitled to compensation for
300 servicing as trustee if the attorney prepared or supervised the

301 execution of the trust instrument that appointed the attorney or
302 person related to the attorney as trustee, unless the attorney
303 or person appointed is related to the settlor or the attorney
304 makes 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 servicing 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
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:

326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350

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

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

Before executing the trust, I was informed that:

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

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

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

...(Signature)...

...(Settlor)...

...(Insert Date)...

(c) For purposes of this subsection:

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
367 the 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
 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
 385 October 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.