

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 conditions; amending s. 733.617, F.S.;  
13          specifying that certain attorneys and persons are not  
14          entitled to compensation for serving as a personal  
15          representative unless the attorney or person is  
16          related to the testator or unless certain disclosures  
17          are made before a will is executed; requiring the  
18          testator to execute a written statement that  
19          acknowledges certain disclosures were made; providing  
20          requirements for the written statement; specifying  
21          that an attorney is deemed to have prepared or  
22          supervised the execution of a will under certain  
23          conditions; specifying how a person may be related to  
24          an individual; specifying when an attorney or person  
25          related to the attorney is deemed to have been

26 nominated in a will; providing construction; providing  
27 applicability; amending s. 736.0708, F.S.; specifying  
28 that certain attorneys and persons are not entitled to  
29 compensation for serving as a trustee unless the  
30 attorney or person is related to the settlor or unless  
31 certain disclosures are made before the trust  
32 instrument is executed; requiring a settlor to execute  
33 a written statement that acknowledges certain  
34 disclosures were made; providing requirements for the  
35 written statement; specifying that an attorney is  
36 deemed to have prepared or supervised the execution of  
37 a trust instrument under certain conditions;  
38 specifying how a person may be related to an  
39 individual; specifying that an attorney or a person  
40 related to the attorney is deemed appointed in a trust  
41 instrument under certain conditions; providing  
42 construction; providing applicability; providing  
43 effective dates.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Effective July 1, 2020, section 731.1065,  
48 Florida Statutes, is created to read:

49 731.1065 Precious metals.-

50 (1) For the purposes of the code, precious metals in any

51 tangible form, such as bullion or coins kept and acquired for  
52 their historical, artistic, collectable, or investment value  
53 apart from their normal use as legal tender for payment, are  
54 tangible personal property.

55 (2) This section is intended to clarify existing law and  
56 applies retroactively to all written instruments executed  
57 before, on, or after July 1, 2020, as well as all proceedings  
58 pending or commenced before, on, or after July 1, 2020, in which  
59 the disposition of precious metals in any tangible form has not  
60 been finally determined.

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

64 731.301 Notice.—

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

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

74 Section 4. Effective July 1, 2020, section 733.610,  
75 Florida Statutes, is amended to read:

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

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

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

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

93           733.617 Compensation of personal representative.—

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

100           (8) (a) An attorney serving as a personal representative,

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

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

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

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

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

126 2. The written statement must be in substantially the  
 127 following form:

128  
 129 I, ...(Name)..., declare that:

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

135  
 136 Before executing the will or codicil, I was informed that:

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

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

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

149  
 150 ...(Signature)...

151 ...(Testator)...  
 152 ...(Insert date)...  
 153

154 (c) For purposes of this subsection:

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

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

- 163 a. A spouse of the individual;
- 164 b. A lineal ascendant or descendant of the individual;
- 165 c. A sibling of the individual;
- 166 d. A relative of the individual or of the individual's  
 167 spouse with whom the attorney maintains a close, familial  
 168 relationship;
- 169 e. A spouse of a person described in subparagraphs b.-d.;
- 170 f. A person who cohabitates with the individual; or
- 171 g. An employee or attorney employed by the same firm as  
 172 the attorney at the time the will is executed.

173 3. An attorney or a person related to the attorney is  
 174 deemed to have been nominated in the will when the will  
 175 nominates the attorney or the person related to the attorney as

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

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

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

190 (f) This subsection applies to all nominations made  
191 pursuant to a will:

192 1. Executed by a resident of this state on or after  
193 October 1, 2020; or

194 2. Republished by a resident of this state on or after  
195 October 1, 2020, if the republished will nominates the attorney  
196 who prepared or supervised the execution of the instrument that  
197 republished the will, or a person related to such attorney, as  
198 personal representative.

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



201 736.0708 Compensation of trustee.—

202 (4) (a) An attorney serving as a trustee or a person  
203 related to such attorney is not entitled to compensation for  
204 serving as trustee if the attorney prepared or supervised the  
205 execution of the trust instrument that appointed the attorney or  
206 person related to the attorney as trustee, unless the attorney  
207 or person appointed is related to the settlor or the attorney  
208 makes the following disclosures to the settlor before the trust  
209 instrument is executed:

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

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

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

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

226 | of the trust in which the attorney or related person is  
 227 | appointed as the trustee.

228 | 2. The written statement must be in substantially the  
 229 | following form:

230 |  
 231 | I, ...(Name)..., declare that:

232 |  
 233 | I have designated my attorney, an attorney employed in the  
 234 | same law firm as my attorney, or a person related to my attorney  
 235 | as a trustee in my trust instrument dated ...(insert date)....

236 |  
 237 | Before executing the trust, I was informed that:

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

242 | 2. Any person, including an attorney, who serves as a  
 243 | trustee is entitled to receive reasonable compensation for  
 244 | servng as trustee.

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

248 |  
 249 | ...(Signature)...  
 250 | ...(Settlor)...

251 ...(Insert Date)...

252

253 (c) For purposes of this subsection:

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

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

262 a. A spouse of the individual;

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

264 c. A sibling of the individual;

265 d. A relative of the individual or of the individual's  
 266 spouse with whom the attorney maintains a close, familial  
 267 relationship;

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

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

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

272 3. An attorney or a person related to the attorney is  
 273 deemed appointed in the trust instrument when the trust  
 274 instrument appoints the attorney or the person related to the  
 275 attorney as trustee, co-trustee, successor, or alternate trustee

276 in the event another person nominated is unable to or unwilling  
277 to serve, or provides the attorney or any person related to the  
278 attorney with the power to appoint the trustee and the attorney  
279 or person related to attorney was appointed using that power.

280 (d) Other than compensation payable to the trustee, this  
281 subsection does not limit any rights or remedies that any  
282 interested person may have at law or equity.

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

286 (f) This subsection applies to all appointments made  
287 pursuant to a trust agreement:

288 1. Executed by a resident of this state on or after  
289 October 1, 2020; or

290 2. Amended by a resident of this state on or after October  
291 1, 2020, if the trust agreement nominates the attorney who  
292 prepared or supervised the execution of the amendment or a  
293 person related to such attorney as trustee.

294 Section 7. Except as otherwise expressly provided in this  
295 act and except for this section, which shall take effect upon  
296 this act becoming a law, this act shall take effect October 1,  
297 2020.