

By Senator Berman

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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. 731.201, F.S.; revising the
7 definition of the term "property"; amending s.
8 731.301, F.S.; specifying that formal notice is not
9 sufficient to invoke a court's personal jurisdiction
10 over a person receiving such formal notice; providing
11 applicability; amending s. 733.212, F.S.; revising the
12 required contents of a notice of administration;
13 amending s. 733.607, F.S.; specifying that a personal
14 representative has the exclusive right to maintain an
15 action to recover possession of property or determine
16 the title to property; specifying that a personal
17 representative does not have a duty to maintain
18 certain causes of action; amending s. 733.610, F.S.;
19 expanding the list of sales or encumbrances that are
20 avoidable by interested persons under certain
21 circumstances; amending s. 733.612, F.S.; revising the
22 types of claims and proceedings a personal
23 representative may properly prosecute or defend;
24 amending s. 733.617, F.S.; specifying that certain
25 attorneys and persons are not entitled to compensation
26 for serving as a personal representative unless the
27 attorney or person is related to the testator or
28 unless certain disclosures are made before a will is
29 executed; requiring the testator to execute a written

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

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

56
57 Section 1. Effective July 1, 2020, section 731.1065,
58 Florida Statutes, is created to read:

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59 731.1065 Precious metals.-

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

65 (2) This section is intended to clarify existing law and
66 applies retroactively to all written instruments executed
67 before, on, or after July 1, 2020, as well as all proceedings
68 pending or commenced before, on, or after July 1, 2020, in which
69 the disposition of precious metals in any tangible form has not
70 been finally determined.

71 Section 2. Subsection (32) of section 731.201, Florida
72 Statutes, is amended to read:

73 731.201 General definitions.—Subject to additional
74 definitions in subsequent chapters that are applicable to
75 specific chapters or parts, and unless the context otherwise
76 requires, in this code, in s. 409.9101, and in chapters 736,
77 738, 739, and 744, the term:

78 (32) "Property" means both real and personal property or
79 any interest in it and anything that may be the subject of
80 ownership, including causes of action of the estate and causes
81 of action the decedent had at the time of death.

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

85 731.301 Notice.—

86 (2) In a probate proceeding, formal notice is sufficient to
87 acquire in rem jurisdiction over the person receiving formal

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88 notice to the extent of the person's interest in the estate or
89 in the decedent's protected homestead. Formal notice is not
90 sufficient to invoke the court's personal jurisdiction over the
91 person receiving formal notice.

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

95 Section 5. Paragraph (e) of subsection (2) of section
96 733.212, Florida Statutes, is amended, and paragraph (f) is
97 added to that subsection, to read:

98 733.212 Notice of administration; filing of objections.—

99 (2) The notice shall state:

100 (e) That, unless an extension is granted pursuant to s.
101 732.2135(2), an election to take an elective share must be filed
102 on or before the earlier of the date that is 6 months after the
103 date of service of a copy of the notice of administration on the
104 surviving spouse, or an attorney in fact or a guardian of the
105 property of the surviving spouse, or the date that is 2 years
106 after the date of the decedent's death.

107 (f) That, under certain circumstances and by failing to
108 contest the will, the recipient of the notice of administration
109 may be waiving his or her right to contest the validity of a
110 trust or other writing incorporated by reference into a will.

111 Section 6. Subsection (1) of section 733.607, Florida
112 Statutes, is amended to read:

113 733.607 Possession of estate.—

114 (1) Except as otherwise provided by a decedent's will,
115 every personal representative has a right to, and shall take
116 possession or control of, the decedent's property, except the

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117 protected homestead, but any real property or tangible personal
118 property may be left with, or surrendered to, the person
119 presumptively entitled to it unless possession of the property
120 by the personal representative will be necessary for purposes of
121 administration. The request by a personal representative for
122 delivery of any property possessed by a beneficiary is
123 conclusive evidence that the possession of the property by the
124 personal representative is necessary for the purposes of
125 administration, in any action against the beneficiary for
126 possession of it. The personal representative shall take all
127 steps reasonably necessary for the management, protection, and
128 preservation of the estate until distribution and has the
129 exclusive right to ~~may~~ maintain an action to recover possession
130 of property or to determine the title to it. The personal
131 representative does not have a duty to maintain a cause of
132 action that has been abandoned, assigned, distributed, or
133 otherwise adjudicated by court order.

134 Section 7. Effective July 1, 2020, section 733.610, Florida
135 Statutes, is amended to read:

136 733.610 Sale, encumbrance, or transaction involving
137 conflict of interest.—Any sale or encumbrance to the personal
138 representative or the personal representative's spouse, agent,
139 or attorney, or any corporation, other entity, or trust in which
140 the personal representative, or the personal representative's
141 spouse, agent, or attorney, has a substantial beneficial or
142 ownership interest, or any transaction that is affected by a
143 conflict of interest on the part of the personal representative,
144 is voidable by any interested person except one who has
145 consented after fair disclosure, unless:

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

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

150 Section 8. Subsection (20) of section 733.612, Florida
151 Statutes, is amended to read:

152 733.612 Transactions authorized for the personal
153 representative; exceptions.—Except as otherwise provided by the
154 will or court order, and subject to the priorities stated in s.
155 733.805, without court order, a personal representative, acting
156 reasonably for the benefit of the interested persons, may
157 properly:

158 (20) Prosecute or defend claims or proceedings in any
159 jurisdiction for the protection of the estate, of the decedent's
160 property, and of the personal representative.

161 Section 9. Subsection (6) of section 733.617, Florida
162 Statutes, is amended, and subsection (8) is added to that
163 section, to read:

164 733.617 Compensation of personal representative.—

165 (6) Except as otherwise provided in this section, if the
166 personal representative is a member of The Florida Bar and has
167 rendered legal services in connection with the administration of
168 the estate, then in addition to a fee as personal
169 representative, there also shall be allowed a fee for the legal
170 services rendered.

171 (8) (a) An attorney serving as a personal representative, or
172 a person related to the attorney, is not entitled to
173 compensation for serving as a personal representative if the
174 attorney prepared or supervised the execution of the will that

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175 nominated the attorney or person related to the attorney as
176 personal representative, unless the attorney or person nominated
177 is related to the testator, or the attorney makes the following
178 disclosures to the testator before the will is executed:

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

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

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

190 (b)1. The testator must execute a written statement
191 acknowledging that the disclosures required under paragraph (a)
192 were made prior to the execution of the will. The written
193 statement must be in a separate writing from the will but may be
194 annexed to the will. The written statement may be executed
195 before or after the execution of the will in which the attorney
196 or related person is nominated as the personal representative.

197 2. The written statement must be in substantially the
198 following form:

199
200 I, ... (Name) ..., declare that:
201

202 I have designated my attorney, an attorney employed in the
203 same law firm as my attorney, or a person related to my attorney

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204 as a nominated personal representative in my will or codicil
 205 dated ...(insert date)....

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

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

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

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

221 ...(Signature)...

222 ...(Testator)...

223 ...(Insert date)...

225 (c) For purposes of this subsection:

226 1. An attorney is deemed to have prepared or supervised the
 227 execution of a will if the preparation or supervision of the
 228 execution of the will was performed by an employee or attorney
 229 employed by the same firm as the attorney at the time the will
 230 was executed.

231 2. A person is "related" to an individual if, at the time
 232 the attorney prepared or supervised the execution of the will,

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233 the person is:

234 a. A spouse of the individual;

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

236 c. A sibling of the individual;

237 d. A relative of the individual or of the individual's

238 spouse with whom the attorney maintains a close, familial

239 relationship;

240 e. A spouse of a person described in sub-subparagraphs b.-

241 d.;

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

243 g. An employee or attorney employed by the same firm as the

244 attorney at the time the will is executed.

245 3. An attorney or a person related to the attorney is

246 deemed to have been nominated in the will when the will

247 nominates the attorney or the person related to the attorney as

248 personal representative, co-personal representative, successor,

249 or alternate personal representative in the event another person

250 nominated is unable to or unwilling to serve, or provides the

251 attorney or any person related to the attorney with the power to

252 nominate the personal representative and the attorney or person

253 related to the attorney was nominated using that power.

254 (d) Other than compensation payable to the personal

255 representative, this subsection does not limit any rights or

256 remedies that any interested person may have at law or in

257 equity.

258 (e) The failure to obtain an acknowledgment from the

259 testator under this subsection does not disqualify a personal

260 representative from serving and does not affect the validity of

261 a will.

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262 (f) This subsection applies to all nominations made
263 pursuant to a will:

264 1. Executed by a resident of this state on or after October
265 1, 2020; or

266 2. Republished by a resident of this state on or after
267 October 1, 2020, if the republished will nominates the attorney
268 who prepared or supervised the execution of the instrument that
269 republished the will, or a person related to such attorney, as
270 personal representative.

271 Section 10. Subsection (4) is added to section 736.0708,
272 Florida Statutes, to read:

273 736.0708 Compensation of trustee.—

274 (4) (a) An attorney serving as a trustee, or a person
275 related to such attorney, is not entitled to compensation for
276 serving as a trustee if the attorney prepared or supervised the
277 execution of the trust instrument that appointed the attorney or
278 person related to the attorney as trustee, unless the attorney
279 or person appointed is related to the settlor or the attorney
280 makes the following disclosures to the settlor before the trust
281 instrument is executed:

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

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

289 3. Compensation payable to the trustee is in addition to
290 any attorney fees payable to the attorney or the attorney's firm

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291 for legal services rendered to the trustee.

292 (b)1. The settlor must execute a written statement
293 acknowledging that the disclosures required under paragraph (a)
294 were made prior to the execution of the trust instrument. The
295 written statement must be in a separate writing from the trust
296 instrument but may be annexed to the trust instrument. The
297 written statement may be executed before or after the execution
298 of the trust in which the attorney or related person is
299 appointed as the trustee.

300 2. The written statement must be in substantially the
301 following form:

302
303 I, ...(Name)..., declare that:

304
305 I have designated my attorney, an attorney employed in the
306 same law firm as my attorney, or a person related to my attorney
307 as a trustee in my trust instrument dated ...(insert date)....

308
309 Before executing the trust, I was informed that:

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

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

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

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...(Signature)...
...(Settlor)...
...(Insert Date)...

(c) For purposes of this subsection:

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

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

- a. A spouse of the individual;
- b. A lineal ascendant or descendant of the individual;
- c. A sibling of the individual;
- d. A relative of the individual or of the individual's spouse with whom the attorney maintains a close, familial relationship;
- e. A spouse of a person described in sub-subparagraphs b.-d.;
- f. A person who cohabitates with the individual; or
- g. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed.

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

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349 in the event another person nominated is unable to or unwilling
350 to serve, or provides the attorney or any person related to the
351 attorney with the power to appoint the trustee and the attorney
352 or person related to the attorney was appointed using that
353 power.

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

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

360 (f) This subsection applies to all appointments made
361 pursuant to a trust agreement:

362 1. Executed by a resident of this state on or after October
363 1, 2020; or

364 2. Amended by a resident of this state on or after October
365 1, 2020, if the trust agreement nominates the attorney who
366 prepared or supervised the execution of the amendment or a
367 person related to such attorney as trustee.

368 Section 11. Except as otherwise expressly provided in this
369 act and except for this section, which shall take effect upon
370 this act becoming a law, this act shall take effect October 1,
371 2020.