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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2024	.	
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The Committee on Banking and Insurance (Powell) recommended the following:

Senate Amendment

Delete lines 61 - 151
and insert:
orders affecting or describing real property, final orders,
orders of final discharge, and orders of guardianship filed in
the clerk's office. No other petitions, pleadings, papers, or
other orders relating to probate matters shall be recorded
except on the written direction of the court. The direction may
be in the order by incorporation in the order of the words "To



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11 be recorded," or words to that effect. Failure to record an
12 order or a judgment does ~~shall~~ not affect its validity.

13 Section 2. Section 732.217, Florida Statutes, is amended to
14 read:

15 732.217 Application.—Sections 732.216–732.228 apply to the
16 disposition at death of the following property acquired by a
17 married person:

18 (1) Personal property, except personal property held as
19 tenants by the entirety, wherever located, which:

20 (a) Was acquired as, or became and remained, community
21 property under the laws of another jurisdiction;

22 (b) Was acquired with the rents, issues, or income of, or
23 the proceeds from, or in exchange for, community property; or

24 (c) Is traceable to that community property.

25 (2) Real property, except real property held as tenants by
26 the entirety and homestead property, which is located in this
27 state, and which:

28 (a) Was acquired with the rents, issues, or income of, the
29 proceeds from, or in exchange for, property acquired as, or
30 which became and remained, community property under the laws of
31 another jurisdiction; or

32 (b) Is traceable to that community property.

33 Section 3. Subsection (2) of section 732.218, Florida
34 Statutes, is amended to read:

35 732.218 Rebuttable presumptions.—In determining whether ss.
36 732.216–732.228 apply to specific property, the following
37 rebuttable presumptions apply:

38 (2) Real property located in this state, ~~other than~~
39 ~~homestead and real property held as tenants by the entirety,~~ and



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40 personal property wherever located acquired by a married person
41 while domiciled in a jurisdiction under whose laws property
42 could not then be acquired as community property and title to
43 which was taken in a form which created rights of survivorship
44 are presumed to be property to which these sections do not
45 apply.

46 Section 4. Section 732.219, Florida Statutes, is amended to
47 read:

48 732.219 Disposition upon death; waiver.—

49 (1) Upon the death of a married person, one-half of the
50 property to which ss. 732.216-732.228 apply is the property of
51 the surviving spouse, is not property of the decedent's probate
52 estate, and is not subject to testamentary disposition by the
53 decedent or distribution under the laws of succession of this
54 state. One-half of that property is the property of the
55 decedent's probate estate ~~decedent~~ and is subject to
56 testamentary disposition or distribution under the laws of
57 succession of this state. The decedent's one-half of that
58 property is not in the elective estate. For purposes of this
59 section, the term "probate estate" means all property wherever
60 located, that is subject to estate administration in any state
61 of the United States or in the District of Columbia.

62 (2) If not previously waived pursuant to s. 732.702, the
63 right of a surviving spouse to assert a claim arising under ss.
64 732.216-732.228, to any right, title, or interest in any
65 property held by the decedent at the time of his or her death
66 may be waived, wholly or partly, by a written contract,
67 agreement, or waiver, signed by the surviving spouse, or any
68 person acting on behalf of a surviving spouse, including, but



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69 not limited to, an attorney in fact; agent; guardian of the
70 property; or personal representative, if the written contract,
71 agreement, or waiver includes the following or substantially
72 similar language:

73

74 By executing this contract, agreement, or waiver, I
75 intend to waive my right as a surviving spouse to
76 assert a claim to any right, title, or interest in
77 property held by the decedent at the time of the
78 decedent's death arising under the Florida Uniform
79 Disposition of Community Property Rights at Death Act
80 (ss. 732.216-732.228, Florida Statutes), wholly or
81 partly, as provided herein.

82

83 Section 5. Section 732.221, Florida Statutes, is repealed.

84 Section 6. Section 732.2211, Florida Statutes, is created
85 to read:

86 732.2211 Demands or disputes; statute of repose.—

87 (1) (a) Any demand or dispute arising, wholly or partly,
88 under ss. 732.216-732.228, regarding any right, title, or
89 interest in any property held by the decedent or surviving
90 spouse at the time of the decedent's death shall be determined
91 in an action for declaratory relief governed by the rules of
92 civil procedure. Notwithstanding any other law, a complaint for
93 such action must be filed within 2 years after the decedent's
94 death or be forever barred.

95 (b) An action for declaratory relief instituted pursuant to
96 this section is not a claim, as defined in s. 731.201, and is
97 not subject to ss. 733.701-733.710.