

By Senator Powell

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1 A bill to be entitled
2 An act relating to wills and estates; amending s.
3 28.223, F.S.; expanding the types of probate documents
4 that must be recorded; revising a provision for
5 incorporating a certain direction by reference;
6 amending s. 732.217, F.S.; revising the types of
7 property subject to the provisions of a certain act;
8 amending s. 732.218, F.S.; revising the types of
9 property for which there is a rebuttable presumption
10 under a specified act; amending s. 732.219, F.S.;
11 specifying that certain property is either included or
12 excluded from the probate estate at the time of death;
13 defining the term "probate estate"; authorizing
14 specified parties to waive certain property rights;
15 specifying how such rights may be waived; requiring
16 that such waiver include specified language; repealing
17 s. 732.221, F.S., relating to perfection of title of
18 personal representative or beneficiary; creating s.
19 732.2211, F.S.; providing that demands and disputes
20 arising under a certain act must be determined using a
21 specified action; requiring that such action be
22 governed by specified rules; requiring that such
23 action be filed within a certain period of time;
24 providing construction; providing that certain parties
25 have no duty to discover if property is subject to a
26 specified act; providing exceptions; providing that
27 certain rights are forfeited if specified actions are
28 not taken; prohibiting certain parties from being held
29 liable in specified circumstances; providing

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30 construction; repealing s. 732.223, F.S., relating to
31 perfection of title of surviving spouses; creating s.
32 732.2231, F.S.; providing definitions; providing that
33 certain parties are not liable for specified actions
34 taken regarding property subject to a certain act;
35 amending s. 732.225, F.S.; expanding the types of
36 property for which there is a certain conclusive
37 presumption; amending s. 732.702, F.S.; expanding the
38 types of rights which may be waived by a surviving
39 spouse; expanding the types of rights considered to be
40 "all rights" within a waiver; amending s. 733.212,
41 F.S.; requiring that a notice of administration state
42 that specified parties have no duty to discover if
43 property is subject to a certain act; providing an
44 exception; amending s. 733.2121, F.S.; requiring that
45 a notice to creditors state that specified parties
46 have no duty to discover if property is subject to a
47 certain act; providing an exception; amending s.
48 733.607, F.S.; specifying that specified parties have
49 no rights to, and may not take possession of, certain
50 property; providing effective dates.

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

53
54 Section 1. Effective January 1, 2025, subsection (1) of
55 section 28.223, Florida Statutes, is amended to read:

56 28.223 Probate records; recordation.—

57 (1) The clerk of the circuit shall record all wills and
58 codicils admitted to probate, orders admitting the will to

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59 probate, orders determining beneficiaries, orders revoking the
60 probate of any wills and codicils, letters of administration,
61 petitions and orders affecting or describing real property,
62 final orders, orders of final discharge, and orders of
63 guardianship filed in the clerk's office. No other petitions,
64 pleadings, papers, or other orders relating to probate matters
65 shall be recorded except on the written direction of the court.
66 The direction may be in the order by incorporation in the order
67 of the words "To be recorded," or words to that effect. Failure
68 to record an order or a judgment shall not affect its validity.

69 Section 2. Section 732.217, Florida Statutes, is amended to
70 read:

71 732.217 Application.—Sections 732.216–732.228 apply to the
72 disposition at death of the following property acquired by a
73 married person:

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

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

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

80 (c) Is traceable to that community property.

81 (2) Real property, except real property held as tenants by
82 the entirety and homestead property, which is located in this
83 state, and which:

84 (a) Was acquired with the rents, issues, or income of, the
85 proceeds from, or in exchange for, property acquired as, or
86 which became and remained, community property under the laws of
87 another jurisdiction; or

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88 (b) Is traceable to that community property.

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

91 732.218 Rebuttable presumptions.—In determining whether ss.
92 732.216–732.228 apply to specific property, the following
93 rebuttable presumptions apply:

94 (2) Real property located in this state, ~~other than~~
95 ~~homestead and real property held as tenants by the entirety,~~ and
96 personal property wherever located acquired by a married person
97 while domiciled in a jurisdiction under whose laws property
98 could not then be acquired as community property and title to
99 which was taken in a form which created rights of survivorship
100 are presumed to be property to which these sections do not
101 apply.

102 Section 4. Section 732.219, Florida Statutes, is amended to
103 read:

104 732.219 Disposition upon death; waiver.—

105 (1) Upon the death of a married person, one-half of the
106 property to which ss. 732.216–732.228 apply is the property of
107 the surviving spouse, is not property of the decedent's probate
108 estate, and is not subject to testamentary disposition by the
109 decedent or distribution under the laws of succession of this
110 state. One-half of that property is the property of the
111 decedent's probate estate ~~decedent~~ and is subject to
112 testamentary disposition or distribution under the laws of
113 succession of this state. The decedent's one-half of that
114 property is not in the elective estate. For purposes of this
115 section, the term "probate estate" means all property wherever
116 located, that is subject to estate administration in any state

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117 of the United States or in the District of Columbia.

118 (2) If not previously waived pursuant to s. 732.702, the
119 right of a surviving spouse to assert a claim arising under ss.
120 732.216-732.228, to any right, title, or interest in any
121 property held by the decedent at the time of his or her death
122 may be waived, wholly or partly, by a written contract,
123 agreement, or waiver, signed by the surviving spouse, or any
124 person acting on behalf of a surviving spouse, including, but
125 not limited to, an attorney in fact; agent; guardian of the
126 property; or personal representative, if the written contract,
127 agreement, or waiver includes the following or substantially
128 similar language:

129
130 "By executing this contract, agreement, or waiver, I intend to
131 wave my right as a surviving spouse to assert a claim to any
132 right, title, or interest in property held by the decedent at
133 the time of the decedent's death arising under the Florida
134 Uniform Disposition of Community Property Rights at Death Act
135 (ss. 732.216-732.228, Florida Statutes), wholly or partly, as
136 provided herein."

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

138 Section 6. Section 732.2211, Florida Statutes, is created
139 to read:

140 732.2211 Demands or disputes; statute of repose.-

141 (1) (a) Any demand or dispute arising, wholly or partly,
142 under ss. 732.216-732.228, regarding any right, title, or
143 interest in any property held by the decedent or surviving
144 spouse at the time of the decedent's death shall be determined
145 in an action for declaratory relief governed by the rules of

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146 civil procedure. Notwithstanding any other law, a complaint for
147 such action must be filed within 2 years after the decedent's
148 death or be forever barred.

149 (b) An action for declaratory relief instituted pursuant to
150 this section is not a claim, as defined in s. 731.201, and is
151 not subject to the provisions of s. 733.702(1) or s. 733.710.

152 (2) The personal representative or curator has no duty to
153 discover whether property held by the decedent or surviving
154 spouse at the time of the decedent's death is property to which
155 ss. 732.216-732.228 apply, or may apply, unless a written demand
156 is made by:

157 (a) The surviving spouse or a beneficiary within 6 months
158 after service of a copy of the notice of administration on the
159 surviving spouse or beneficiary.

160 (b) A creditor, except as provided in paragraph (c), within
161 3 months after the time of the first publication of the notice
162 to creditors.

163 (c) A creditor required to be served with a copy of the
164 notice to creditors, within the later of 30 days after the date
165 of service on the creditor or the time under paragraph (b).

166 (3) The rights of any interested person who fails to timely
167 file an action for declaratory relief pursuant to this section
168 are forfeited. The decedent's surviving spouse, personal
169 representative or curator, or any other person or entity that at
170 any time is in possession of any property to which ss. 732.216-
171 732.228 apply, or may apply, shall not be subject to liability
172 for any such forfeit rights. The decedent's personal
173 representative or curator may distribute the assets of the
174 decedent's estate without liability for any such forfeit rights.

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175 (4) This section does not affect any issue or matter not
176 arising, wholly or partly, under ss. 732.216-732.228.

177 Section 7. Section 732.223, Florida Statutes, is repealed.

178 Section 8. Section 732.2231, Florida Statutes, is created
179 to read:

180 732.2231 Protection of payors and other third parties.—

181 (1) As used in this section, the term:

182 (a) "Governing instrument" has the same meaning as in s.
183 732.2025.

184 (b) "Payor" means the decedent's personal representative, a
185 trustee of a trust created by the decedent, an insurer, business
186 entity, employer, government, governmental agency or
187 subdivision, or any other person authorized or obligated by law
188 or a governing instrument to make payments.

189 (c) "Person" has the same meaning as in s. 732.2025.

190 (2) A property interest is subject to property rights under
191 ss. 732.216-732.228, however, a payor or other third party is
192 not liable for paying, distributing, or transferring such
193 property to a beneficiary designated in a governing instrument,
194 or for taking any other action in good faith reliance on the
195 validity of a governing instrument.

196 Section 9. Section 732.225, Florida Statutes, is amended to
197 read:

198 732.225 Acts of married persons.—Sections 732.216-732.228
199 do not prevent married persons from severing or altering their
200 interests in property to which these sections apply. The
201 reinvestment of any property to which these sections apply in
202 real property located in this state which is or becomes real or
203 personal property held by tenants by the entirety or homestead

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204 property creates a conclusive presumption that the spouses have
205 agreed to terminate the community property attribute of the
206 property reinvested.

207 Section 10. Subsection (1) of section 732.702, Florida
208 Statutes, is amended to read:

209 732.702 Waiver of spousal rights.—

210 (1) The rights of a surviving spouse to an elective share,
211 intestate share, pretermitted share, homestead, exempt property,
212 family allowance, or to assert a claim under the Florida Uniform
213 Disposition of Community Property Rights at Death Act as
214 described in ss. 732.216-732.228, and preference in appointment
215 as personal representative of an intestate estate or any of
216 those rights, may be waived, wholly or partly, before or after
217 marriage, by a written contract, agreement, or waiver, signed by
218 the waiving party in the presence of two subscribing witnesses.
219 The requirement of witnesses shall be applicable only to
220 contracts, agreements, or waivers signed by Florida residents
221 after the effective date of this law. Any contract, agreement,
222 or waiver executed by a nonresident of Florida, either before or
223 after this law takes effect, is valid in this state if valid
224 when executed under the laws of the state or country where it
225 was executed, whether or not he or she is a Florida resident at
226 the time of death. Unless the waiver provides to the contrary, a
227 waiver of "all rights," or equivalent language, in the property
228 or estate of a present or prospective spouse, or a complete
229 property settlement entered into after, or in anticipation of,
230 separation, dissolution of marriage, or divorce, is a waiver of
231 all rights to elective share, intestate share, pretermitted
232 share, homestead, exempt property, family allowance, or to

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233 assert a claim under the Florida Uniform Disposition of
234 Community Property Rights at Death Act as described in ss.
235 732.216-732.228, and preference in appointment as personal
236 representative of an intestate estate, by the waiving party in
237 the property of the other and a renunciation by the waiving
238 party of all benefits that would otherwise pass to the waiving
239 party from the other by intestate succession or by the
240 provisions of any will executed before the written contract,
241 agreement, or waiver.

242 Section 11. Paragraph (g) is added to subsection (2) of
243 section 733.212, Florida Statutes, to read:

244 733.212 Notice of administration; filing of objections.—

245 (2) The notice shall state:

246 (g) That the personal representative or curator has no duty
247 to discover whether any property held at the time of the
248 decedent's death by the decedent or the decedent's surviving
249 spouse is property to which the Florida Uniform Disposition of
250 Community Property Rights at Death Act as described in ss.
251 732.216-732.228 applies, or may apply, unless a written demand
252 is made by the surviving spouse or a beneficiary as specified
253 under s. 732.2211.

254 Section 12. Subsection (1) of section 733.2121, Florida
255 Statutes, is amended to read:

256 733.2121 Notice to creditors; filing of claims.—

257 (1) Unless creditors' claims are otherwise barred by s.
258 733.710, the personal representative shall promptly publish a
259 notice to creditors. The notice shall contain the name of the
260 decedent, the file number of the estate, the designation and
261 address of the court in which the proceedings are pending, the

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262 name and address of the personal representative, the name and
263 address of the personal representative's attorney, and the date
264 of first publication. The notice shall state that creditors must
265 file claims against the estate with the court during the time
266 periods set forth in s. 733.702, or be forever barred. The
267 notice shall state that a personal representative or curator has
268 no duty to discover whether any property held at the time of the
269 decedent's death by the decedent or the decedent's surviving
270 spouse is property to which the Florida Uniform Disposition of
271 Community Property Rights at Death Act as described in ss.
272 732.216-732.228, applies, or may apply, unless a written demand
273 is made by a creditor as specified under s. 732.2211.

274 Section 13. Subsection (1) of section 733.607, Florida
275 Statutes, is amended to read:

276 733.607 Possession of estate.—

277 (1) Except as otherwise provided by a decedent's will,
278 every personal representative has a right to, and shall take
279 possession or control of, the decedent's property, except the
280 protected homestead, but any real property or tangible personal
281 property may be left with, or surrendered to, the person
282 presumptively entitled to it unless possession of the property
283 by the personal representative will be necessary for purposes of
284 administration. The request by a personal representative for
285 delivery of any property possessed by a beneficiary is
286 conclusive evidence that the possession of the property by the
287 personal representative is necessary for the purposes of
288 administration, in any action against the beneficiary for
289 possession of it. The personal representative shall take all
290 steps reasonably necessary for the management, protection, and

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291 preservation of the estate until distribution and may maintain
292 an action to recover possession of property or to determine the
293 title to it. Notwithstanding anything in this section, the
294 personal representative has no right to, and shall not knowingly
295 take possession or control of, a surviving spouse's one-half
296 share of property to which the Florida Uniform Disposition of
297 Community Property Rights at Death Act as described in ss.
298 732.216-732.228, applies.

299 Section 14. Except as otherwise expressly provided in this
300 act, this act shall take effect upon becoming a law.