

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 923 Wills and Estates
SPONSOR(S): Civil Justice Subcommittee, Fabricio
TIED BILLS: IDEN./SIM. BILLS: SB 1064

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Judiciary Committee	18 Y, 0 N	Mawn	Kramer

SUMMARY ANALYSIS

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (“decedent”), paying the decedent’s debts in an orderly fashion, and distributing the decedent’s assets (“probate estate”) to his or her beneficiaries, whether such beneficiaries are determined according to a will (“testate succession”) or are heirs at law determined by default rules of succession where the decedent did not leave a will (“intestate succession”). Probate proceedings are governed by The Florida Probate Code, codified in chs. 731 – 735, F.S., and the Florida Probate Rules of Court.

Section 28.223, F.S., requires the clerk of the circuit court to record all wills admitted to probate, orders revoking the probate of any wills, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk’s office. This section also prohibits the clerks from recording any other probate documents except upon the court’s written direction.

Each state establishes rules for the disposition of marital property upon the death of one spouse where the spouses were domiciled in that state. There are currently two marital property disposition systems utilized in the United States: the “community property” system and the “common law property” system. Nine states are “community property” states, in which each spouse is entitled to a one-half share of most property acquired during the marriage; in such states, a decedent’s probate estate consists of only his or her one-half share of the community property. In contrast, 41 states, including Florida, are “common law property” states, which system looks to how an asset is titled to determine whether the property is marital property or separate property; in such states, a decedent’s separate property may generally be disposed of however he or she wishes upon his or her death.

Though Florida is a common law property state, Florida courts have long recognized that married couples relocating to Florida from community property jurisdictions maintain their community property rights in property that was community property before their relocation. In 1992, Florida adopted the Florida Uniform Disposition of Community Property Rights at Death Act (“Act”), codified in ss. 732.216-732.228, F.S., to provide guidance for preserving the rights of a surviving spouse in any such community property upon a spouse’s death where probate is opened in Florida. Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act, including the statute of limitations period and the two-year statute of repose applicable to such claims.

CS/HB 923:

- Amends s. 28.223, F.S., to expand the types of probate records which the clerk must file.
- Exempts title disputes under the Act from the definition of creditor claims, provides a new dispute resolution mechanism and two-year statute of repose for such disputes, and makes certain revisions to the Act to improve clarity and reduce the risk of unintended forfeitures of community property rights.

The bill may have an indeterminate fiscal impact on local government but does not appear to have a fiscal impact on state government. The bill provides an effective date of upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0923c.JDC

DATE: 1/30/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Probate Code

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (“decedent”), paying the decedent’s debts in an orderly fashion, and distributing the decedent’s assets (“probate estate”) to his or her beneficiaries, whether such beneficiaries are determined according to a will (“testate succession”) or are heirs at law determined by default rules of succession where the decedent did not leave a will (“intestate succession”).¹ Probate proceedings are governed by The Florida Probate Code, codified in chs. 731 – 735, F.S., and the Florida Probate Rules of Court.²

Venue

Under the Probate Code, venue for the probate of wills and granting of letters is proper:

- In the county in Florida where the decedent was domiciled.
- If the decedent had no domicile in Florida, in any county where the decedent’s property lies.
- If the decedent had no domicile and possessed no property in Florida, then in the county where any of the decedent’s debtors reside.³

Effect of Probate

Until admitted to probate in Florida or in the state where the decedent was domiciled, a will is ineffective to prove title to, or the right to possession of, the testator’s property.⁴ The probate of a will in Florida is conclusive of the will’s due execution; that it was executed by a competent testator, free of fraud, duress, mistake, and undue influence; and that the will was unrevoked on the testator’s death.⁵

However, any property not effectively disposed of by will passes to the decedent’s heirs as specified in Chapter 732, F.S., pertaining to the disposition of intestate estates.⁶ In such situations, it is the decedent’s death that vests the heirs’ right to the decedent’s intestate property.⁷

Determination of Beneficiaries

When property passes by intestate succession or the will is unclear and there is doubt about either who is entitled to receive any part of the property, or the shares and amounts that any person is entitled to, any interested person⁸ may petition the court to determine beneficiaries or their shares.⁹ Any personal representative who makes distribution or takes any other action pursuant to an order determining beneficiaries is fully protected, and a separate civil action to determine beneficiaries may be brought when an estate has not been administered.¹⁰

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Jan. 25, 2024); s. 731.201(2) and (20), F.S.

² The Florida Probate Rules of Court are available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited Jan. 25, 2024). S. 731.005, F.S.

³ S. 733.101, F.S.

⁴ S. 733.103(1), F.S.

⁵ S. 733.103(2), F.S.

⁶ S. 732.101, F.S.

⁷ *Id.*

⁸ An “interested person” is any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. S. 731.201(23), F.S.

⁹ S. 733.105, F.S.

¹⁰ *Id.*

Personal Representatives

Generally, any person who has full legal capacity to act on his or her own behalf and is a Florida resident at the time of the death of the person whose estate is to be administered may act as the estate's personal representative.¹¹ However, a person may not serve in such capacity if the person:

- Has been convicted of a felony;
- Is mentally or physically unable to perform the duties; or
- Is a minor.¹²

Furthermore, a person who is not a Florida resident may serve in such capacity if the person is:

- The legally adopted child or adoptive parent of the decedent;
- Related to the decedent by lineal consanguinity;
- A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or
- The spouse of a person otherwise so qualified.¹³

Regardless of who is filling the role, a personal representative's duties and powers begin upon appointment.¹⁴ Generally, a personal representative is a fiduciary¹⁵ who:

- Must observe the standards of care applicable to trustees;
- Has a duty to settle and distribute the estate in accordance with the terms of the decedent's will and the Probate Code in an expeditious and efficient manner; and
- Must use the authority conferred by the Probate Code, under the will, and by court order for the best interests of interested persons, including creditors.¹⁶

Recording of Probate Records

Section 28.223, F.S., requires the clerk of the circuit court to record all wills and codicils admitted to probate, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. This section also prohibits the clerks from recording any other petitions, pleadings, papers, or other orders relating to probate matters except upon written direction by the court, which direction may be by incorporation using the words "to be recorded," or words with similar effect.

Sometimes, a need arises to determine the true beneficiaries of an estate after probate closes. In such instances, it could be helpful to refer to the official records of the county in which probate was opened; however, many of the probate documents which Florida law requires the clerk to record do not list heirs in an estate.¹⁷ In the case of an intestate estate, there is no will to record and, thus, there is often no indication in the public records of the identities of the decedent's beneficiaries.¹⁸ Even where a will is recorded, the beneficiaries named in the will may differ from the beneficiaries listed in the probate petition.¹⁹ In such instances, the only way to determine an estate's beneficiaries may be to physically appear at the clerk's office and inspect the court docket, where such a docket has not already been destroyed by the clerks due to the passage of time.²⁰

¹¹ Florida law also authorizes certain entities to serve as a personal representative. Ss. 733.302 and 733.305(1), F.S.

¹² S. 733.303(1), F.S.

¹³ S. 733.304, F.S.

¹⁴ S. 733.601, F.S.

¹⁵ "Fiduciary" means a person having duty, created by his or her undertaking, to act primarily for another's benefit in matters connected with such undertaking. The duties of a fiduciary involve good faith, trust, special confidence, and candor. Black's Law Dictionary 431 (6th ed. 1991).

¹⁶ S. 733.602, F.S.

¹⁷ Real Property, Probate, and Trust Law Section of the Florida Bar ("RPPTLS"), *White Paper: Proposal to Amend §28.223, Fla. Stat. (Probate Records; recordation)*.

¹⁸ *Id.*

¹⁹ Examples include a beneficiary's death, an invalid exercise of homestead property, disclaimers, or a non-existent beneficiary (such as an incorrectly-named charity). *Id.*

²⁰ *Id.*

Probate Creditor Claims

Florida law authorizes any person to file a claim against a decedent's probate estate if the decedent owed such person money at the time of his or her death ("probate creditor claim"). Generally, the personal representative must promptly publish a notice to creditors, which notice must contain the name of the decedent; the file number of the estate; the designation and address of the court in which the proceedings are pending; the name and address of the personal representative; the name and address of the personal representative's attorney; and the date of first publication.²¹ Publication must be once a week for 2 consecutive weeks, in a newspaper published in the county where the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county.²² The personal representative must also promptly make a diligent search to determine the names and addresses of the decedent's creditors who are reasonably ascertainable, and promptly serve a copy of the notice on those creditors; however, service is not required on any creditor who has filed a claim as provided in this part, whose claim has been paid in full, or whose claim is listed in a personal representative's timely filed proof of claim.²³

Florida law establishes a statute of limitations for bringing a probate creditor claim, which is triggered by the publication or service of the notice to creditors. Specifically, s. 733.702(1), F.S., provides that no claim or demand against the decedent's estate that arose before the decedent's death is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding on or before the later of the date that is three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. Further, s. 733.710(1), F.S., provides a two-year statute of repose applicable to such claims, running from the date of the decedent's death. Creditor claims not filed within these time periods are forever barred.²⁴

Disposition of Marital Property Upon Spouse's Death

Each state establishes rules for the disposition of marital property upon the death of one spouse where the spouses were domiciled in that state. There are currently two marital property disposition systems utilized in the United States: the "community property" system and the "common law property" system.

Community Property States

Nine states are "community property" states.²⁵ The federal Fifth Circuit Court of Appeals summarized the origins and attributes of this system, which gives each spouse to a marriage an equal one-half share of all property acquired during the marriage (with the exception of gifts, inheritances, and certain damages awards),²⁶ as follows:

The community property system comes from the custom of the women of the Visigoths and other Germanic tribes sharing the fighting and the spoils of war with their men; it owes its strength to the civilized view that marriage is a full partnership. Husband and wife are equal partners. Each has a present, vested half interest in all community property. All property accumulated during marriage is community property, unless it is received by gift, devise, or inheritance... Thus, on death... the community [property] is divided equally. Neither spouse has testamentary disposition over the other's half of the community [property].²⁷

²¹ S. 733.2121, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ These states are Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin. Guam and Puerto Rico also utilize the community property system. RPPTLS, *supra* note 17.

²⁶ Property acquired before the marriage, along with gifts, inheritances, and certain damages awards, is considered separate property, which may be owned solely by one spouse.

²⁷ *Commissioner v. Chase Manhattan Bank*, 259 F. 2d 231 239 (5th Cir. 1958).

In other words, one spouse in a community property state can dispose of his or her one-half share of the community property in any manner he or she chooses upon his or her death; however, a spouse is unable to dispose of his or her surviving spouse's one-half share. Thus, the probate estate of a deceased spouse in a community property state would consist only of his or her one-half share.

Common Law Property States

Forty-one states, including Florida, are "common law property" states.²⁸ Generally speaking, this system looks to how an asset is titled to determine whether the property is marital property or separate property.²⁹ Where an asset is titled in the name of only one spouse, such asset is presumed to be separate property; thus, the spouse in whose name it is titled may generally dispose of the asset in any manner he or she chooses upon his or her death.³⁰ However, where an asset is held jointly, a decedent spouse is limited to disposing of only that property interest which he or she owns. In Florida, property may be held jointly as tenants in common,³¹ as joint tenants with right of survivorship,³² or as tenants by the entirety,³³ and a spouse may have a life estate in the property without an ownership interest.³⁴

Florida Uniform Disposition of Community Property Rights at Death Act

Though Florida is a common law property state, Florida courts have long recognized that married couples relocating to Florida from community property jurisdictions maintain their community property rights in property that was community property before their relocation.³⁵ In 1992, Florida adopted the Florida Uniform Disposition of Community Property Rights at Death Act ("Act"), codified in ss. 732.216-732.228, F.S., to provide guidance for preserving the rights of a surviving spouse in any such community property upon a spouse's death where probate is opened in Florida.³⁶

Application

²⁸ RPPTLS, *supra* note 17.

²⁹ Joseph M. Percopo, *Understanding the New Florida Community Property Trust, Part I*, 96 Fla. Bar Journal No. 4, <https://www.floridabar.org/the-florida-bar-journal/understanding-the-new-florida-community-property-trust-part-i/> (last visited Jan. 25, 2024).

³⁰ Exceptions may apply, such as when the surviving spouse has homestead rights in a parcel of real property under Florida law. Homestead rights give the surviving spouse an interest in the property; such interest is a life estate or a tenancy in common where the decedent is survived by both a spouse and children, and a full ownership interest where the decedent is not survived by children. Title to the homestead property will pass in such manner automatically upon the spouse's death, even if a will or trust directs otherwise. Further, Florida law recognizes the right of a surviving spouse to elect up to a 1/3 share of the decedent spouse's probate estate, regardless of the terms of the decedent's will. This prevents one spouse from disinheriting the other, and possibly leaving the surviving spouse destitute. Ss. 732.201-732.2155, F.S.

³¹ A tenancy in common is a method of joint property ownership in which two or more persons concurrently own a share of a property, which share is not required to be equal. Each co-tenant has an equal right to possess, use, and enjoy the property (although this right may be modified by agreement of the parties), and may freely sell his or her ownership share; similarly, when a co-tenant dies, his or her ownership share becomes part of his or her probate estate. Oni Harton, *Differences Between Joint Tenants with Survivorship and Tenants in Common*, <https://www.findlaw.com/estate/planning-an-estate/whats-the-difference-between-joint-tenants-with-survivorship-and.html> (last visited Jan. 25, 2024).

³² A joint tenancy with rights of survivorship is a method of joint property ownership in which two or more persons concurrently own an equal share of a property. Each joint tenant has an equal right to possess, use, and enjoy the property (which right cannot be modified even by agreement of the parties) but cannot sell or otherwise transfer his or her ownership interest; when one joint tenant dies, his or her ownership interest automatically passes to the other joint tenants. *Id.*

³³ A tenancy by the entirety is a form of joint ownership only available to married couples. Under such an ownership structure, the spouses are considered one person and, thus, each spouse owns a 100 percent share of the property. Neither spouse may transfer the property without joinder of the other spouse, but upon a spouse's death, the surviving spouse automatically receives full title to the property. Anne Buzby-Walt, *Are Florida Laws on Tenancy by the Entireties in Personalty as Clear as We Think?*, 85 Fla. Bar Journal No. 8 (Sept./Oct. 2011), <https://www.floridabar.org/the-florida-bar-journal/are-florida-laws-on-tenancy-by-the-entireties-in-personalty-as-clear-as-we-think/> (last visited Jan. 25, 2024).

³⁴ A life estate gives the holder thereof a right to exclusive use and possession of a property during his or her lifetime but not the right to sell the property without joinder of the remainder beneficiaries. Aisha Success, *The Differences Between Life Estates and Trusts*, (June 30, 2022), <https://www.findlaw.com/estate/trusts/the-differences-between-life-estates-and-trusts.html> (last visited Jan. 25, 2024); Percopo, *supra* note 29.

³⁵ See, e.g., *Quintana v. Ordone*, 195 So. 2d 577, 579-580 (Fla. 3d DCA 1967).

³⁶ RPPTLS, *supra* note 17.

Under the Act, when one spouse dies, one-half of the couple's community property is the property of the surviving spouse, while the other one-half of that property is the property of the decedent.³⁷ The Act applies to the disposition at death of the following property acquired by a married person:

- Personal property, wherever located, which:
 - Was acquired as, or became and remained, community property under the laws of another jurisdiction;
 - Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or
 - Is traceable to that community property.³⁸
- Real property, except real property held as tenants by the entirety, which is located in Florida, and which:
 - Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or
 - Is traceable to that community property.³⁹

In determining whether the Act applies to specific property, the following rebuttable presumptions apply:

- Property acquired during marriage by a spouse of that marriage while domiciled in a community property state is presumed to have been acquired as, or to have become and remained, community property.⁴⁰
- Real property located in Florida, other than homestead and real property held as tenants by the entirety, and personal property wherever located acquired by a married person while domiciled in a common law property state and title to which was taken in a form which created rights of survivorship are presumed to not be community property.⁴¹

Further, the reinvestment of any property to which the Act applies in real property located in Florida which is or becomes homestead property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.⁴²

Title Disputes

Because community property rights generally apply regardless of how property acquired during a marriage is titled, it may be necessary to perfect title to certain property in either the surviving spouse or a beneficiary of the decedent spouse to fairly distribute each spouse's one-half share. Under the Act, if the title to any property to which the Act applies is held by the surviving spouse at the time of the decedent's death, the decedent's personal representative or beneficiary may bring an action to perfect title to the property.⁴³ However, the personal representative has no duty to discover whether any property held by the surviving spouse is community property to which the Act applies, unless a written demand is made by a beneficiary within three months after service of a copy of the notice of administration on the beneficiary or by a creditor within three months after the first publication of the notice to creditors.⁴⁴

Further, if title to any property to which the Act applies was held by the decedent at the time of the decedent's death, title of the surviving spouse may be perfected by a probate court's order or by execution of an instrument by the decedent's personal representative or beneficiaries with the probate court's approval.⁴⁵ However, the probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is community property, and the personal representative has no duty to discover whether property held by the decedent is community property

³⁷ S. 732.219, F.S.

³⁸ S. 732.217, F.S.

³⁹ *Id.*

⁴⁰ S. 732.218, F.S.

⁴¹ *Id.*

⁴² S. 732.225, F.S.

⁴³ S. 732.221, F.S.

⁴⁴ *Id.*

⁴⁵ S. 732.223, F.S.

unless a written demand is made by the surviving spouse within three months after service of a copy of the notice of administration on the surviving spouse.⁴⁶

Probate Creditor Claims

Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act.⁴⁷ In other words, the court held that a surviving spouse's attempt to confirm his or her community property rights is a probate creditor claim, and, thus, subject to the statute of limitations period and the two-year statute of repose applicable to such claims.⁴⁸ This has the potential to result in the unintended forfeiture of a surviving spouse's community property rights where the surviving spouse fails to bring a timely creditor claim and is thus forever barred from asserting his or her rights.⁴⁹

Effect of Proposed Changes

Probate Records

CS/HB 923 amends s. 28.223, F.S., to expand the types of probate records which the clerk must file. Specifically, the bill provides that the clerks must file, in addition to those documents already required under current law, orders admitting a will to probate and orders determining beneficiaries. Practically speaking, this should ensure that evidence of heirship will be forever preserved in a county's official records and, thus, be easily and publicly accessible. Where such evidence reflects real property ownership passing through probate, this change may help to avoid economic loss for true heirs and their descendants.

Florida Uniform Disposition of Community Property Rights at Death Act

Application

The bill amends s. 732.217, F.S., to clarify the types of property to which the Act does not apply. Specifically, the bill clarifies that the Act does not apply to personal property held as tenants by the entirety or to homestead property. The bill also:

- Amends s. 732.218, F.S., to remove unnecessary language indicating that property held as tenants by the entirety or as homestead property acquired by a married person while domiciled in a common law property state is not community property.
- Amends s. 732.225, F.S., to provide that the reinvestment of any community property in real property located in Florida which is or becomes real or personal property held by tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

⁴⁶ *Id.*

⁴⁷ *Johnson v. Townsend*, 259 So. 3d 851 (Fla. 4th DCA 2018).

⁴⁸ *Id.*

⁴⁹ RPPTLS, *supra* note 17.

Disposition Upon Death

The bill amends s. 732.219, F.S., to expressly state that, upon the death of a married person, the surviving spouse's one-half share of the community property is not property of the decedent's probate estate, but the other one-half share of the community property is part of the decedent's probate estate. Further, the bill amends this section to:

- Define "probate estate" for the purposes of this section to mean all property, wherever located, that is subject to estate administration in any state or in the District of Columbia.
- Expressly authorize a surviving spouse to waive any right, title, or interest in community property, wholly or partly, by written contract, agreement, or waiver, signed by the surviving spouse or any person acting on behalf of the surviving spouse, where such written contract, agreement, or waiver includes statutorily-required language.

Similarly, the bill amends s. 732.702, F.S., to include the right to assert a claim under the Act as a right of a surviving spouse which may be waived.

Title Disputes

The bill repeals s. 732.221, F.S., relating to perfection of title of personal representative or beneficiary, and s. 732.223, F.S., relating to perfection of title of surviving spouse, and replaces these sections with newly-created s. 732.2211, F.S., which section expressly exempts title disputes from the definition of creditor claim and specifies that such disputes are not subject to the statutes of limitations or of repose applicable to such claims.

Instead, the bill creates a new dispute resolution mechanism in this section for title disputes arising under the Act and provides a two-year statute of repose for such disputes. Under the bill, any demand or dispute arising under the Act regarding any right, title, or interest in any property held by the decedent or surviving spouse when the decedent died must be determined in an action for declaratory relief governed by the Florida Rules of Civil Procedure. Such an action must be filed within two years after the decedent's death or is forever barred, and the rights of any interested person who fails to timely file an action for declaratory relief under this section are forfeited. The decedent's surviving spouse, personal representative, or any other person or entity that at any time possesses any property to which the Act applies, or may apply, is not subject to liability for any such forfeit rights, and the decedent's personal representative may distribute the assets without liability for any such forfeit rights.

Further, the bill provides that the personal representative has no duty to discover whether property held by the decedent or surviving spouse when the decedent died is community property, unless a written demand is made by:

- The surviving spouse or a beneficiary within six months after service of a copy of the notice of administration on such person.
- A creditor, except as otherwise provided, within three months after the time of the first publication of the notice to creditors.
- A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or three months after the time of the first publication of the notice.

The bill amends ss. 733.212 and 733.2121, F.S., to require the notice of administration and the notice to creditors to specify as such. However, the bill also amends s. 733.607, F.S., to specify that the personal representative has no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of community property.

Protection of Payors and Other Third Parties

The bill creates s. 732.2231, F.S., to provide that a property interest is subject to community property rights, but that a payor or other third party is not liable for paying, distributing, or transferring such property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument. Under the bill:

- “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in a beneficiary form; pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.
- “Payor” means the decedent’s personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

Effective Date

The bill provides an effective date of upon becoming a law, except as otherwise expressly provided in the Act.

B. SECTION DIRECTORY:

Section 1: Amending s. 28.223, F.S., relating to probate records; recordation.

Section 2: Amending s. 732.217, F.S., relating to application.

Section 3: Amending s. 732.218, F.S., relating to rebuttable presumptions.

Section 4: Amending s. 732.219, F.S., relating to disposition upon death.

Section 5: Repealing s. 732.221, F.S., relating to perfection of title of personal representatives or beneficiary.

Section 6: Creating s. 732.2211, F.S., relating to demands or disputes; statute of repose.

Section 7: Repealing s. 732.223, F.S., relating to perfection of title of surviving spouse.

Section 8: Creating s. 732.2231, F.S., relating to protection of payors and other third parties.

Section 9: Amending s. 732.225, F.S., relating to acts of married persons.

Section 10: Amending s. 732.702, F.S., relating to waiver of spousal rights.

Section 11: Amending s. 733.212, F.S., relating to notice of administration; filing of objections.

Section 12: Amending s. 733.2121, F.S., relating to notice to creditors, filing of claims.

Section 13: Amending s. 733.607, F.S., relating to possession of estate.

Section 14: Providing an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on the clerks of the court due to the requirement that the clerks record additional probate documents. To the extent that the clerks can assume the recording of such additional documents within existing resources, the bill’s fiscal impact will be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent it leads to the preservation of:

- Records identifying a decedent's beneficiaries, which may help true heirs avoid economic loss where real property ownership passes through probate by intestacy succession.
- A surviving spouse's community property rights.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed petitions affecting or describing real property from the list of probate records the bill would have required the clerks to record in addition to those records already required by current law.

This analysis is drafted to the PCS as passed by the Civil Justice Subcommittee.