

Council Substitute for House Bill No. 137

An act relating to probate; amending s. 63.172, F.S.; providing for the right of inheritance with respect to adoption; amending s. 409.9101, F.S.; revising language with respect to recovery of payments made on behalf of certain Medicaid-eligible persons; amending s. 655.936, F.S., relating to the opening of a decedent's safe-deposit box; amending s. 731.005, F.S., relating to the Florida Probate Code; amending s. 731.011, F.S.; providing reference to the Florida Probate Rules with respect to the determination of substantive rights under the Florida Probate Code; amending s. 731.104, F.S.; revising language with respect to the verification of documents; amending s. 731.106, F.S., relating to the assets of nondomiciliaries; repealing s. 731.107, F.S., relating to adversary proceedings; amending s. 731.110, F.S.; revising language with respect to proceedings concerning caveat; repealing s. 731.111, F.S., relating to notice to creditors; amending s. 731.201, F.S.; revising general definitions with respect to the Florida Probate Code; amending s. 731.301, F.S.; revising language with respect to notice; amending s. 731.303, F.S., relating to representation; amending s. 732.101, F.S., relating to intestate estates; amending s. 732.102, F.S.; revising language with respect to the share of the spouse; increasing the monetary amount of certain shares; amending s. 732.103, F.S., relating to the share of certain heirs; amending s. 732.107, F.S.; clarifying provisions; revising a filing date; revising certain provisions regarding owner's representation; amending s. 732.1101, F.S.; providing that aliens shall have the same right of inheritance as citizens; amending s. 732.2025, F.S.; redefining the term "qualifying special needs trust" or "supplemental needs trust"; amending s. 732.2035, F.S.; redefining the term "decedent's ownership interest"; amending s. 732.2045, F.S.; adding an exclusion to the elective share for property that is part of the protected homestead; amending s. 732.2055, F.S.; redefining "value" for purposes of calculating the elective estate; amending s. 732.2075, F.S.; revising the formula for payment of the elective share; amending s. 732.2085, F.S.; adding a cross reference; amending s. 732.2095, F.S.; correcting a cross reference; modifying the formula for determining the fair market value of assets regarding the elective share; amending s. 732.2105, F.S.; revising the effect of an elective share election on other estate interests; amending s. 732.2125, F.S.; revising language with respect to the right of election; amending s. 732.2135, F.S.; revising language with respect to time of election, extensions, and withdrawal; amending s. 732.2145, F.S.; revising language with respect to the order of contribution; amending s. 732.2155, F.S.; revising language with respect to the effective date of certain trusts; providing for applicability of certain provisions under specified circumstances; amending s. 732.218, F.S.; revising language with respect to rebuttable presumptions; amending s. 732.219, F.S., relating to disposition upon death; amending s. 732.221, F.S.; revising language with respect to perfection of title of personal representative or beneficiary; amending s. 732.222, F.S.,

relating to the purchaser for value or lender; amending s. 732.223, F.S.; revising language with respect to perfection of title of surviving spouse; amending s. 732.302, F.S.; revising language with respect to pretermitted children; amending s. 732.401, F.S.; revising language with respect to descent of homestead; amending s. 732.4015, F.S.; revising language with respect to the definition of “owner” and “devise” concerning homestead; amending s. 732.402, F.S.; revising language with respect to exempt property; amending s. 732.403, F.S.; revising language with respect to family allowance; amending s. 732.501, F.S.; revising language with respect to who may make a will; amending s. 732.502, F.S.; revising language with respect to execution of wills; amending s. 732.503, F.S.; revising language with respect to self-proof of will; amending s. 732.505, F.S.; revising language with respect to revocation by writing; amending s. 732.507, F.S.; revising language with respect to effect of subsequent marriage, birth, or dissolution of marriage; amending s. 732.513, F.S.; revising language with respect to devises to trustees; amending s. 732.514, F.S., relating to vesting of devises; amending s. 732.515, F.S.; revising language with respect to separate writing identifying devises of tangible property; amending s. 732.6005, F.S., relating to rules of construction and intention; amending s. 732.601, F.S.; revising language with respect to the Simultaneous Death Law; amending s. 732.603, F.S.; revising language with respect to antilapse, deceased devises, and class gifts; amending s. 732.604, F.S., relating to the failure of a testamentary provision; amending s. 732.605, F.S., relating to change in securities, accessions, and nonademption; amending s. 732.606, F.S., relating to nonademption of specific devises in certain cases; amending s. 732.701, F.S.; providing for agreements concerning succession executed by a nonresident under certain circumstances; amending s. 732.702, F.S.; revising language with respect to waiver of spousal rights; amending s. 732.801, F.S.; revising language with respect to disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment; amending s. 732.804, F.S.; providing for provisions relating to disposition of the body; amending s. 732.901, F.S., relating to production of wills; eliminating language with respect to willful failure to deposit the will; transferring, amending, and renumbering ss. 732.910, 732.911, 732.912, 732.913, 732.914, 732.915, 732.916, 732.917, 732.918, 732.9185, 732.919, 732.921, 732.9215, 732.92155, 732.9216, and 732.922, F.S.; correcting cross references; amending ss. 381.004 and 381.0041, F.S.; correcting cross references; amending s. 733.101, F.S., relating to the venue of probate proceedings; amending s. 733.103, F.S., relating to the effect of probate; amending s. 733.104, F.S.; revising language with respect to the suspension of the statute of limitations in favor of the personal representative; amending s. 733.105, F.S.; revising language with respect to the determination of beneficiaries; amending s. 733.106, F.S.; revising language with respect to costs and attorney fees; amending s. 733.107, F.S., relating to the burden of proof in contests; amending s. 733.109, F.S.; revising language with respect to the revocation of probate; amending s. 733.201, F.S., relating to proof of

wills; amending s. 733.202, F.S.; providing that any interested person may petition for administration; repealing s. 733.203, F.S., relating to when notice is required; amending s. 733.204, F.S.; revising language with respect to the probate of a will written in a foreign language; amending s. 733.205, F.S., relating to the probate of a notarial will; amending s. 733.206, F.S., relating to the probate of a resident after foreign probate; amending s. 733.207, F.S.; revising requirements with respect to the establishment and probate of a lost or destroyed will; amending s. 733.208, F.S.; revising language with respect to the discovery of a later will; amending s. 733.209, F.S.; providing requirements with respect to the estates of missing persons; amending s. 733.212, F.S.; revising language with respect to the notice of administration and filing of objections; creating s. 733.2121, F.S.; providing for notice to creditors and the filing of claims; amending s. 733.2123, F.S., relating to adjudication before issuance of letters; amending s. 733.213, F.S.; providing that a will may not be construed until after it has been admitted to probate; amending s. 733.301, F.S.; revising language with respect to preference in the appointment of the personal representative; amending s. 733.302, F.S.; revising language with respect to who may be appointed personal representative; amending s. 733.305, F.S., relating to trust companies and other corporations and associations; amending s. 733.306, F.S.; revising language with respect to the effect of the appointment of a debtor; amending s. 733.307, F.S., relating to succession of administration; amending s. 733.308, F.S., relating to the administrator ad litem; amending s. 733.309, F.S., relating to the executor de son tort; creating s. 733.310, F.S.; providing for when a personal representative is not qualified; repealing s. 733.401, F.S., relating to the issuance of letters; amending s. 733.402, F.S.; revising language with respect to the bond of a fiduciary; amending s. 733.403, F.S.; revising language with respect to the amount of the bond; amending s. 733.404, F.S., relating to the liability of the surety; amending s. 733.405, F.S.; revising language with respect to the release of surety; amending s. 733.406, F.S.; revising language with respect to bond premium allowable as an expense of administration; amending s. 733.501, F.S.; revising language with respect to curators; amending s. 733.502, F.S.; revising language with respect to the resignation of the personal representative; amending s. 733.503, F.S.; providing for the appointment of a successor upon the resignation of the personal representative; creating s. 733.5035, F.S.; providing for the surrender of assets after resignation; creating s. 733.5036, F.S.; providing for accounting and discharge following resignation; amending s. 733.504, F.S.; revising language with respect to the removal of the personal representative; amending s. 733.505, F.S.; providing that a petition for removal shall be filed in the court having jurisdiction of the administration; amending s. 733.506, F.S.; revising language with respect to proceedings for removal; creating s. 733.5061, F.S.; providing for the appointment of a successor upon removal of the personal representative; repealing s. 733.507, F.S., relating to administration following resignation or removal; amending s. 733.508, F.S.; providing for accounting and

discharge upon removal; amending s. 733.509, F.S.; revising language with respect to surrender of assets upon removal; amending s. 733.601, F.S.; revising language with respect to time of accrual of duties and powers; amending s. 733.602, F.S., relating to the general duties of a personal representative; amending s. 733.603, F.S., relating to when a personal representative may proceed without court order; amending s. 733.604, F.S.; revising language with respect to inventory; repealing s. 733.605, F.S., relating to appraisers; creating s. 733.6065, F.S.; providing for the opening of a safe-deposit box; amending s. 733.607, F.S.; revising language with respect to the possession of the estate; amending s. 733.608, F.S.; revising language with respect to the general power of the personal representative; amending s. 733.609, F.S.; revising language with respect to improper exercise of power and the breach of fiduciary duty; amending s. 733.610, F.S., relating to the sale, encumbrance, or transaction involving a conflict of interest; amending s. 733.611, F.S.; revising language with respect to persons dealing with the personal representative; amending s. 733.612, F.S.; revising language with respect to transactions authorized for the personal representatives and exceptions thereto; amending s. 733.6121, F.S., relating to powers of the personal representative with respect to environmental or human health laws affecting property subject to administration; amending s. 733.613, F.S.; revising language with respect to the personal representatives' right to sell real property; amending s. 733.614, F.S., relating to the powers and duties of a successor personal representative; amending s. 733.615, F.S.; revising language with respect to joint personal representatives; amending s. 733.616, F.S.; revising language with respect to the powers of the surviving personal representatives; amending s. 733.617, F.S.; revising language with respect to compensation of the personal representative; amending s. 733.6171, F.S.; revising language with respect to compensation of the attorney for the personal representative; amending s. 733.6175, F.S.; revising language with respect to proceedings for review of employment of agents and compensation of personal representatives and employees of the estate; amending s. 733.619, F.S., relating to the individual liability of the personal representative; amending s. 733.701, F.S.; revising language with respect to notifying creditors; correcting cross references; amending s. 733.702, F.S.; revising language with respect to limitations on presentation of claims; amending s. 733.703, F.S.; revising language with respect to the form and manner of presenting a claim; amending s. 733.704, F.S., relating to amendment of claims; amending s. 733.705, F.S.; revising language with respect to payment of and objection to claims; amending s. 733.707, F.S.; revising language with respect to the order of payment of expenses and obligations; amending s. 733.708, F.S.; revising language with respect to compromise; amending s. 733.710, F.S., relating to claims against estates; amending s. 733.801, F.S.; providing that the personal representative shall pay as an expense of administration certain costs; amending s. 733.802, F.S.; revising language with respect to proceedings for compulsory payment of devises or distributive interest; amending s. 733.803, F.S., relating

to encumbered property; amending s. 733.805, F.S.; revising language with respect to the order in which assets are appropriated; amending s. 733.806, F.S., relating to advancement; amending s. 733.808, F.S.; revising language with respect to death benefits and disposition of proceeds; amending s. 733.809, F.S., relating to right of retainer; amending s. 733.810, F.S.; revising language with respect to distribution in kind and valuation; amending s. 733.811, F.S.; revising language with respect to the right or title of distributee; amending s. 733.812, F.S.; providing for improper distribution or payment and liability of distributee; amending s. 733.813, F.S., relating to protection of the purchaser from the distributee; amending s. 733.814, F.S.; revising language with respect to partition for the purpose of distribution; amending s. 733.815, F.S.; providing for private contracts among certain interested persons; amending s. 733.816, F.S., relating to the distribution of unclaimed property held by the personal representative; amending s. 733.817, F.S.; revising language with respect to apportionment of estate taxes; amending s. 733.901, F.S.; providing requirements with respect to final discharge; amending s. 733.903, F.S.; revising language with respect to subsequent administration; amending s. 734.101, F.S., relating to the foreign personal representative; amending s. 734.102, F.S.; revising language with respect to ancillary administration; amending s. 734.1025, F.S.; revising language with respect to the nonresident decedent's testate estate with property not exceeding a certain value in this state; providing for the determination of claims; amending s. 734.104, F.S., relating to foreign wills; amending s. 734.201, F.S., relating to jurisdiction by act of a foreign personal representative; amending s. 734.202, F.S., relating to jurisdiction by act of decedent; repealing s. 735.101, F.S., relating to family administration and the nature of the proceedings; repealing s. 735.103, F.S., relating to petition for family administration; repealing s. 735.107, F.S., relating to family administration distribution; amending s. 735.201, F.S.; increasing a monetary amount with respect to summary administration; amending s. 735.203, F.S.; revising language with respect to the petition for summary administration; amending s. 735.206, F.S.; revising language with respect to summary administration distribution; amending s. 735.2063, F.S.; revising language with respect to notice to creditors; repealing s. 735.209, F.S., relating to joinder of heirs, devisees, or surviving spouse in summary administration; amending s. 735.301, F.S., relating to disposition without administration; amending s. 735.302, F.S.; revising language with respect to income tax refunds in certain circumstances; creating s. 737.208, F.S.; prohibiting distribution pending outcome of contest; providing exceptions; amending s. 737.3054, F.S.; revising language with respect to trustee's duty to pay expenses and obligations of grantor's estate; amending s. 737.306, F.S.; revising language with respect to personal liability of trustee; creating s. 737.3061, F.S.; providing for limitation on actions against certain trusts; amending s. 737.308, F.S.; revising language with respect to notice of trust; amending ss. 215.965, 660.46, and 737.111, F.S.; correcting cross references; directing the Division of Statutory Revision and Indexing to change

the title of certain parts of the Probate Code; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (1) of section 63.172, Florida Statutes, are amended to read:

63.172 Effect of judgment of adoption.—

(1) A judgment of adoption, whether entered by a court of this state, another state, or of any other place, has the following effect:

(b) It terminates all legal relationships between the adopted person and the adopted person's relatives, including the birth parents, except a birth parent who is a petitioner or who is married to a petitioner, so that the adopted person thereafter is a stranger to his or her former relatives for all purposes, including ~~inheritance and~~ the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some designation not based on a parent and child or blood relationship, except that rights of inheritance shall be as provided in the Florida Probate Code.

(c) Except for rights of inheritance, it creates the relationship between the adopted person and the petitioner and all relatives of the petitioner that would have existed if the adopted person were a blood descendant of the petitioner born within wedlock. This relationship shall be created for all purposes, including ~~inheritance and~~ applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly exclude an adopted person from their operation or effect.

Section 2. Section 409.9101, Florida Statutes, is amended to read:

409.9101 Recovery for payments made on behalf of Medicaid-eligible persons.—

(1) This section may be cited as the “Medicaid Estate Recovery Act.”

(2) It is the intent of the Legislature by this section to supplement Medicaid funds that are used to provide medical services to eligible persons. Medicaid estate recovery shall generally be accomplished by the agency through the filing a statement of claim claims against the estate of a ~~deceased Medicaid recipient~~ recipients as provided in part VII of chapter 733. Recovery ~~The recoveries~~ shall be made pursuant to federal authority in s. 13612 of the Omnibus Budget Reconciliation Act of 1993, which amends s. 1917(b)(1) of the Social Security Act, 42 U.S.C. s. 1396p(b)(1).

~~(3) Pursuant to s. 733.212(4)(a), the personal representative of the estate of the decedent shall serve the agency with a copy of the notice of administration of the estate within 3 months after the first publication of the notice, unless the agency has already filed a claim pursuant to this section.~~

~~(3)(4) The acceptance of public medical assistance, as defined by Title XIX (Medicaid) of the Social Security Act, including mandatory and optional supplemental payments under the Social Security Act, shall create a debt to claim, as defined in s. 731.201, in favor of the agency in as an interested person as defined in s. 731.201. The claim amount is calculated as the total amount paid to or for the benefit of the recipient for medical assistance on behalf of the recipient after the recipient he or she reached 55 years of age. Payment of benefits to a person under the age of 55 years does not create a debt. Upon filing of a statement of claim in the probate proceeding, the agency shall be an interested person as defined in s. 731.201 to the same extent as other estate claimants There is no claim under this section against estates of recipients who had not yet reached 55 years of age.~~

~~(4)(5) At the time of filing the claim, The agency may reserve the right to amend the claim as a matter of right up to 1 year after the last date medical services were rendered to the decedent amounts based on medical claims submitted by providers subsequent to the agency's initial claim calculation.~~

~~(5)(6) The claim of the agency shall be the current total allowable amount of Medicaid payments as denoted in the agency's provider payment processing system at the time the agency's claim or amendment is filed. The agency's provider processing system reports shall be admissible as prima facie evidence in substantiating the agency's claim.~~

~~(7) The claim of the agency under this section shall constitute a Class 3 claim under s. 733.707(1)(c), as provided in s. 414.28(1).~~

~~(6)(8) The debt claim created under this section shall not be enforced if the recipient is survived by:~~

~~(a) A spouse;~~

~~(b) A child or children under 21 years of age; or~~

~~(c) A child or children who are blind or permanently and totally disabled pursuant to the eligibility requirements of Title XIX of the Social Security Act.~~

~~(7)(9) In accordance with s. 4, Art. X of the State Constitution, No debt claim under this section shall be enforced against any property that is determined to be exempt from the claims of creditors under the constitution or laws of this state the homestead of the deceased Medicaid recipient and is determined to be exempt from the claims of creditors of the deceased Medicaid recipient.~~

~~(8)(10) The agency shall not recover from an estate if doing so would cause undue hardship for the qualified heirs, as defined in s. 731.201. The personal representative of an estate and any heir may request that the agency waive recovery of any or all of the debt when recovery would create a hardship. A hardship does not exist solely because recovery will prevent any heirs from receiving an anticipated inheritance. The following criteria shall be considered by the agency in reviewing a hardship request:~~

- (a) The heir:
1. Currently resides in the residence of the decedent;
 2. Resided there at the time of the death of the decedent;
 3. Has made the residence his or her primary residence for the 12 months immediately preceding the death of the decedent; and
 4. Owns no other residence;
- (b) The heir would be deprived of food, clothing, shelter, or medical care necessary for the maintenance of life or health;
- (c) The heir can document that he or she provided full-time care to the recipient which delayed the recipient's entry into a nursing home. The heir must be either the decedent's sibling or the son or daughter of the decedent and must have resided with the recipient for at least 1 year prior to the recipient's death; or
- (d) The cost involved in the sale of the property would be equal to or greater than the value of the property.

~~(9)~~(14) Instances arise in Medicaid estate-recovery cases where the assets include a settlement of a claim against a liable third party. The agency's claim under s. 409.910 must be satisfied prior to including the settlement proceeds as estate assets. The remaining settlement proceeds shall be included in the estate and be available to satisfy the Medicaid estate-recovery claim. The Medicaid estate-recovery share shall be one-half of the settlement proceeds included in the estate. Nothing in this subsection is intended to limit the agency's rights against other assets in the estate not related to the settlement. However, in no circumstances shall the agency's recovery exceed the total amount of Medicaid medical assistance provided to the recipient.

~~(10)~~(12) In instances where there are no liquid assets to satisfy the Medicaid estate-recovery claim, if there is nonexempt personal property or non-homestead real property which is not protected homestead and the costs of sale will not exceed the proceeds, the property shall be sold to satisfy the Medicaid estate-recovery claim. Real property shall not be transferred to the agency in any instance.

~~(11)~~(13) The agency is authorized to adopt rules to implement the provisions of this section.

Section 3. Section 655.936, Florida Statutes, is amended to read:

655.936 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.—

(1) Subject to the provisions of subsection (3), the lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his or her letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant the resident personal

representative access to any safe-deposit box in the decedent's name and permit him or her to remove from such box any part or all of the contents thereof.

(2) If a foreign personal representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such foreign personal representative of his or her letters of authority, deliver to such foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery is a valid discharge of the lessor for all property or contents so delivered. Such foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his or her letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) Notwithstanding the provisions of subsection (1), after the death of a lessee of a safe-deposit box, the lessor shall permit the initial opening of the safe-deposit box and the removal of the contents of the safe-deposit box and the removal of the contents of the safe-deposit box in accordance with s. 733.6065.

~~(4)~~(3) A lessor is not liable for damages or penalty by reason of any delivery made pursuant to this section.

~~(4) Notwithstanding other provisions of this section, the initial opening of any safe-deposit box of the decedent must be conducted in the presence of an employee of the institution where the box is located and the personal representative. The inventory of the contents of the box also must be conducted in the presence of the employee and the personal representative, each of whom must verify the contents of the box by signing a copy of the inventory. The personal representative shall file the safe-deposit box inventory with the court within 10 days after the box is opened.~~

Section 4. Section 731.005, Florida Statutes, is amended to read:

731.005 Short title.—Chapters 731-735 shall be known and may be cited as the Florida Probate Code and herein referred to as “the “code” in this act.

Section 5. Section 731.011, Florida Statutes, is amended to read:

731.011 Determination of substantive rights; procedures.—~~The code became Florida Probate Code shall become effective on January 1, 1976. The substantive rights of all persons that have vested prior to January 1, 1976, shall be determined as provided in former chapters 731-737 and 744-746 as they existed prior to January 1, 1976. The procedures for the enforcement of vested substantive rights that have vested before January 1, 1976, shall be as provided in the Florida Probate Rules this code.~~

Section 6. Section 731.104, Florida Statutes, is amended to read:

731.104 Verification of documents.—When verification of a document is required in this code or by rule, the document filed shall include an oath or affirmation as provided in the Florida Probate Rules or the following statement: “~~Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.~~” Any person who ~~shall willfully~~ includes ~~include~~ a false statement in the document shall be guilty of perjury ~~and upon conviction shall be punished accordingly.~~

Section 7. Section 731.106, Florida Statutes, is amended to read:

731.106 Assets of nondomiciliaries.—

(1) ~~For purposes of aiding the determination concerning location of assets that may be relevant in cases involving nondomiciliaries,~~ A debt in favor of a nondomiciliary, other than one evidenced by investment or commercial paper or other instrument, is located in the county where the debtor resides or, if the debtor is not a person other than an individual, at the place where the debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is at the time of death.

(2) When a nonresident decedent, ~~whether or not who is a citizen of the United States, or a citizen or subject of a foreign country provides by in her or his will that the testamentary disposition of her or his tangible or intangible personal property having a situs within this state, or of her or his real property in this state, shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by Florida law. The court may, and in the case of a decedent who was at the time of death a resident of a foreign country the court shall, direct the personal representative appointed in this state to make distribution directly to those designated by the decedent’s will as beneficiaries of the tangible or intangible property or to the persons entitled to receive the decedent’s personal estate under the laws of the decedent’s domicile, as the case may be.~~

Section 8. Section 731.107, Florida Statutes, is repealed:

~~731.107 Adversary proceedings.—The rules of civil procedure shall be applied in any adversary proceeding in probate.~~

Section 9. Section 731.110, Florida Statutes, is amended to read:

731.110 Caveat; proceedings.—

(1) ~~Any person, including a creditor, who If any creditor of the estate of a decedent is apprehensive that an estate, either testate or intestate, will be administered without the creditor’s knowledge, or if any person other than a creditor is apprehensive that an estate may be administered, or that a will may be admitted to probate, without the person’s knowledge, he or she may file a caveat with the court.~~

(2) ~~A No caveat shall contain be effective unless it contains the decedent’s social security number, last known residence address, and or date of birth,~~

if they are known, as ~~an~~ identification number, a statement of the interest of the caveator in the estate, the name and specific residence address of the caveator, and, if the caveator, other than a state agency, is a nonresident of the county, the additional name and specific residence address of some person residing in the county, or office address of a member of The Florida Bar residing in Florida, designated as the agent of the caveator, upon whom service may be made.

Section 10. Section 731.111, Florida Statutes, is repealed:

731.111—Notice to creditors.—

~~(1) When a notice to creditors is required, a notice shall be published once a week for 2 consecutive weeks, two publications being sufficient, in a newspaper published in the county in which the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county. Proof of publication shall be filed. The notice shall notify all persons having claims or demands against the estate to file their claims with the clerk within the time periods set forth in s. 733.702 with respect to notice of administration, or be forever barred. The notice shall 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 person causing the notice to be published, and the name and address of his or her attorney, and state the date of first publication.~~

~~(2) Notwithstanding the provisions of subsection (1), the Department of Revenue is not barred from filing a claim against the estate of a decedent for taxes due under chapter 199 after the expiration of the time for filing claims provided in subsection (1), provided the department files its claim within 30 days after the service of the inventory or federal estate tax return on the department as provided in s. 198.13, whichever shall last occur. Additionally, in the event that the information contained therein is amended or supplemented, the department has the right to file its claim or amend a previously filed claim within 30 days after the service of such information.~~

Section 11. Section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 737, 738, and 744:

(1) “Authenticated,” when referring to copies of documents or judicial proceedings required to be filed with the court under this code, shall mean a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure 28 U.S.C. s. 1733 or s. 1741.

(2) “Beneficiary” means heir at law, in an intestate estate, and devisee, in a testate estate. The term “beneficiary” does not apply to an heir at law or a devisee after that person’s his or her interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, in the absence of a conflict of interest of the

trust, the trustee is a beneficiary of the estate. An owner of a beneficial interest in the trust is a beneficiary of the trust and is, in the absence of a conflict of interest of the trust, not a beneficiary of the estate.

(3) “Child” includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) “~~Claim Claims~~” means a ~~liability liabilities~~ of the decedent, whether arising in contract, tort, or otherwise, and funeral ~~expense expenses~~. The term does not include ~~an expense expenses~~ of administration or estate, inheritance, succession, or other death taxes.

(5) “Clerk” means the clerk or deputy clerk of the court.

(6) “Court” means the circuit court.

(7) “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(8) “Devise,” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes “gift,” “give,” “bequeath,” “bequest,” and “legacy.” A devise is subject to charges for debts, expenses, and taxes as provided in this code, ~~or in the will,~~ or the trust.

(9) “Devisee” means a person designated in a will or trust to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee. The beneficiaries of the trust are not devisees.

(10) “Distributee” means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in ~~the trustee’s his or her~~ hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) “Domicile” ~~means shall be~~ a person’s usual place of dwelling and shall be synonymous with “residence.”

(12) “Estate” means the property of a decedent that is the subject of administration.

(13) “Exempt property” means the property of a decedent’s estate which is described in s. 732.402.

(14) “File” means to file with the court or clerk.

(15) “Foreign personal representative” means a personal representative of another state or a foreign country.

(16) “Formal notice” means formal notice under the Florida Probate Rules s. 731.301(1).

(17) “Grantor” means one who creates or adds to a trust and includes “settlor” or “trustor” and a testator who creates or adds to a trust.

(18) “Heirs” or “heirs at law” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) “Incompetent” means a minor or a person adjudicated incompetent.

(20) “Informal notice” or “notice” means informal notice under the Florida Probate Rules s. 731.301(2).

(21) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate of the estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary an heir at law or a devisee who has received complete his or her distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(22) “Letters” means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated “letters of administration.”

(23) “Other state” means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(24) “Parent” excludes any person who is only a stepparent, foster parent, or grandparent.

(25) “Personal representative” means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(26) “Petition” means a written request to the court for an order.

(27) “Probate of will” means all steps necessary to establish the validity of a will and to admit a will to probate.

(28) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

(29) “Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution which at the death of the owner the exemption inures to the owner’s surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.

~~(30)(29) “Residence” means a person’s usual place of dwelling, and is synonymous with “domicile.”~~

~~(31)(30) “Residuary devise” means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, “residuary devise” or “residue” means a devise of all assets remaining after satisfying the obligations of the estate.~~

~~(32)(31) “Security” means a security as defined in s. 517.021.~~

~~(33)(32) “Security interest” means a security interest as defined in s. 671.201.~~

~~(34)(33) “Trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts; conservatorships; personal representatives; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.~~

~~(35)(34) “Trustee” includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.~~

~~(36)(35) “Will” means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.~~

Section 12. Section 731.301, Florida Statutes, is amended to read:

731.301 Notice; ~~method and time; proof.~~—

(1) FORMAL NOTICE.—

~~(a) When formal notice to an interested person of a petition or other proceeding is required, the notice shall be given to the petitioner shall serve a copy of the petition to any interested person or that person’s her or his~~

attorney as provided in the Florida Probate Rules, if the interested person has appeared by attorney or requested that notice be sent to her or his attorney. The petition shall be served:

1. ~~By any form of mail or by any commercial delivery service approved by the chief judge of each judicial circuit, requiring a signed receipt, as follows:~~

a. ~~On the interested person's attorney of record, if any, or to the post-office address given in her or his demand for notice, if any;~~

b. ~~On an individual, other than an incompetent, by mailing a copy to the individual's dwelling house or usual place of abode or to the place where she or he regularly conducts her or his business or profession;~~

c. ~~On an incompetent person, by mailing a copy to the incompetent, to the person having custody of the incompetent, and to any legal guardian of the incompetent, at their respective dwelling houses, usual places of abode, or regular places of business or profession;~~

d. ~~On a corporation, by mailing a copy to the corporation at its last known address; or~~

2. ~~As provided in chapter 48; or~~

3. ~~In the circumstances provided in chapter 49, in the manner provided therein.~~

(b) ~~If there is no answer served on the petitioner within 20 days from the service of the petition, the petition shall be considered ex parte. If an answer is served, a hearing shall be set and reasonable notice given.~~

(c) ~~If service is made under subparagraph (a)2. or subparagraph (a)3., proof shall be made as provided in chapter 48 or chapter 49. If service is made by mail under subparagraph (a)1., proof shall be by a verified statement of the person mailing service who shall attach the signed receipt or other evidence satisfactory to the court that delivery was made to, or refused by, the addressee or the addressee's agent.~~

(2)(d) ~~Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate.~~

(2) ~~INFORMAL NOTICE.—~~

(a) ~~When informal notice of a petition or other proceeding is required or permitted, it shall be served on the person or the person's attorney as provided in the Florida Rules of Civil Procedure relating to service of pleadings.~~

(b) ~~Proof of service shall be made by filing an attorney's certificate of service or, if filed by a person who is not a member of The Florida Bar, by a verified statement.~~

(3) ~~EFFECT OF NOTICE.~~—Persons given notice of any proceeding petition shall be bound by all orders entered in that proceeding on the petition.

(4) ~~INFORMAL NOTICE REQUIRED.~~—Unless otherwise specifically provided, informal notice of every petition affecting property rights or interests must be given to interested persons.

Section 13. Section 731.303, Florida Statutes, is amended to read:

731.303 Representation.—In proceedings involving estates of decedents or trusts, the following apply:

(1) ~~Interests to be affected shall be described in pleadings that give information by name or class, by reference to the instrument creating the interests, or in another appropriate manner.~~

(1)(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a general, special, or limited power of appointment, including one in the form of a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

(b) To the extent there is no conflict of interest between them or among the persons represented:

1. Orders binding a guardian of the property bind the ward ~~whose estate he or she controls~~.

2. Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will, in establishing or adding to a trust, in reviewing the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties.

3. Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate, in actions or proceedings by or against the estate.

(c) An unborn or unascertained person, or a minor or any other person under a legal disability, who is not otherwise represented is bound by an order to the extent that person's ~~his or her~~ interest is represented by another party having the same or greater quality of interest in the proceeding.

(2)(3) Orders binding a guardian of the property shall not bind the ward.

(3)(4) Notice is required as follows:

(a) Notice as prescribed by the Florida Probate Rules s. 731.301 shall be given to every interested person, or to one who can bind the interested person as described in paragraph (1)(2)(a) or paragraph (1)(2)(b). Notice may be given both to the interested person and to another who can bind him or her.

(b) Notice is given to unborn or unascertained persons who are not represented pursuant to paragraph (1)(2)(a) or paragraph (1)(2)(b) by giving notice to all known persons whose interests in the proceedings are the same as, or of a greater quality than, those of the unborn or unascertained persons.

(4)(5) If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of an incapacitated incompetent person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, or a person whose identity or address is unknown. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(5)(6) Agreements, waivers, consents, approvals, accounts, or other statements that fully disclose the matters ~~that which~~ are the subject of ~~the such~~ accounts or statements and that bind the sole holder or all coholders of a general, special, or limited power of appointment, including a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

Section 14. Subsection (2) of section 732.101, Florida Statutes, is amended to read:

732.101 Intestate estate.—

(2) The decedent's death is the event that vests the heirs' right to the decedent's intestate property.

Section 15. Section 732.102, Florida Statutes, is amended to read:

732.102 Spouse's share of intestate estate ~~Share of spouse.~~—

(4) The intestate share of the surviving spouse is:

(1)(a) If there is no surviving lineal descendant of the decedent, the entire intestate estate.

(2)(b) If there are surviving lineal descendants of the decedent, all of whom are also lineal descendants of the surviving spouse ~~also~~, the first \$60,000 ~~\$20,000~~ of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated ~~hereunder~~ to the surviving spouse to satisfy the \$60,000 ~~\$20,000~~ shall be valued at the fair market value on the date of distribution ~~the decedent's death~~.

(3)(c) If there are surviving lineal descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

(2) ~~The court shall allot the property to which the spouse is entitled, treating all beneficiaries equitably.~~

Section 16. Paragraph (c) of subsection (4) and subsection (5) of section 732.103, Florida Statutes, are amended to read:

732.103 Share of other heirs.—The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

(4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:

(c) If there is either no paternal kindred or ~~if there is~~ no maternal kindred, the estate shall go to such of the other kindred who as shall survive, in the order stated above aforesaid.

(5) If there is no kindred of either part, the whole of the such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

Section 17. Section 732.107, Florida Statutes, is amended to read:

732.107 Escheat.—

(1) When a person dies leaving an estate ~~dies~~ without being survived by any person entitled to a part of it, that part the property shall escheat to the state.

~~(2)(a) In this event, or when doubt exists about the existence of any person entitled to the estate, the personal representative shall institute a proceeding for the determination of beneficiaries, as provided in this code, within 1 year after letters have been issued to him or her, and notice shall be served on the Department of Legal Affairs. If the personal representative fails to institute the proceeding within the time fixed, it may be instituted by the Department of Legal Affairs.~~

~~(b) On or before January 15 of each year, each court shall furnish to the department a list of all estates being administered in which no person appears to be entitled to the property and the personal representative has not instituted a proceeding for the determination of beneficiaries.~~

~~(3) If the court determines that there is no person entitled to the estate and that the estate escheats, the Property that escheats shall be sold as provided in the Florida Probate Rules and the proceeds paid to the Treasurer of the state and deposited by him or her in the State School Fund within a reasonable time to be fixed by the court.~~

~~(3)(4) At any time within 10 years after the payment to the Treasurer granting of letters, a person claiming to be entitled to the proceeds estate of the decedent may petition to reopen the administration to and assert entitlement his or her rights to the proceeds escheated property. If the claimant is entitled to any of the estate of the decedent, the court shall fix the amount to which he or she is entitled, and it shall be repaid to him or~~

~~her with interest at the legal rate by the officials charged with the disbursement of state school funds. If no claim is timely asserted within the time fixed, the title of the state's rights to state to the property and the proceeds shall become absolute.~~

(4)(5) The Department of Legal Affairs shall represent the state in all proceedings concerning escheated estates.

(5)(6)(a) If a person entitled to the proceeds funds assigns the his or her rights to receive payment to an attorney, Florida-certified public accountant, or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with that such person, the Department of Banking and Finance is authorized to make distribution in accordance with the such assignment.

(b) Payments made to an attorney, Florida-certified public accountant, or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney, Florida-certified public accountant, or private investigative agency in a financial institution authorized to accept such deposits and located in this state.

(c) Distribution by the attorney, Florida-certified public accountant, or private investigative agency to the person entitled to the proceeds funds shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests the in writing such distribution in writing before it is made.

(d) The department shall not be civilly or criminally liable for any proceeds funds distributed pursuant to this subsection, provided such distribution is made in good faith.

~~(7) Except as herein provided, escheated estates shall be administered as other estates.~~

Section 18. Section 732.1101, Florida Statutes, is amended to read:

732.1101 Aliens.—~~Aliens shall have the same rights of inheritance as citizens No person is disqualified to take as an heir because he or she, or a person through whom he or she claims, is, or has been, an alien.~~

Section 19. Effective October 1, 2001, subsection (8) of section 732.2025, Florida Statutes, is amended to read:

732.2025 Definitions.—As used in ss. 732.2025-732.2155, the term:

(8) “Qualifying special needs trust” or “supplemental needs trust” means a trust established for a an ill or disabled surviving spouse with court approval before or after a decedent's death for such incapacitated surviving spouse, if, commencing on the decedent's death:

(a) The income and principal are distributable to or for the benefit of the spouse for life in the discretion of one or more trustees less than half of whom are ineligible family trustees. For purposes of this paragraph, ineligible

family trustees include the decedent's grandparents and any descendants of the decedent's grandparents who are not also descendants of the surviving spouse; and

(b) During the spouse's life, no person other than the spouse has the power to distribute income or principal to anyone other than the spouse.

~~(c) The requirement for court approval and the limitation on ineligible family trustees shall not apply if the aggregate value of all the trust property as of the applicable valuation date in all a qualifying special needs trusts for the spouse trust is less than \$100,000. For purposes of this subsection, value is determined on the "applicable valuation date" as defined in s. 732.2095(1)(a).~~

Section 20. Effective October 1, 2001, subsection (2) and paragraph (a) of subsection (5) of section 732.2035, Florida Statutes, are amended to read:

732.2035 Property entering into elective estate.—Except as provided in s. 732.2045, the elective estate consists of the sum of the values as determined under s. 732.2055 of the following property interests:

(2) The decedent's ownership interest in accounts or securities registered in "Pay On Death," "Transfer On Death," "In Trust For," or coownership with right of survivorship form. For this purpose, "decedent's ownership interest" means, in the case of accounts or securities held in tenancy by the entirety, one-half of the value of the account or security, and in all other cases, that portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without the duty to account to any person.

(5)(a) That portion of property, other than property described in subsection (3), subsection (4), or subsection (7), transferred by the decedent to the extent that at the time of the decedent's death:

1. The decedent possessed the right to, or in fact enjoyed the possession or use of, the income or principal of the property; or
2. The principal of the property could, in the discretion of any person other than the spouse of the decedent, be distributed or appointed to or for the benefit of the decedent.

~~In the application of this subsection, a right to payments under a commercial or private from an annuity, an annuity trust, a unitrust, or under a similar contractual arrangement shall be treated as a right to that portion of the income of the property necessary to equal the annuity, unitrust, or other contractual payment.~~

Section 21. Effective October 1, 2001, subsection (1) of section 732.2045, Florida Statutes, is amended to read:

732.2045 Exclusions and overlapping application.—

(1) EXCLUSIONS.—Section 732.2035 does not apply to:

(a) Except as provided in s. 732.2155(4), any transfer of property by the decedent to the extent the transfer is irrevocable before the effective date of this subsection or after that date but before the date of the decedent's marriage to the surviving spouse.

(b) Any transfer of property by the decedent to the extent the decedent received adequate consideration in money or money's worth for the transfer.

(c) Any transfer of property by the decedent made with the written consent of the decedent's spouse. For this purpose, spousal consent to split-gift treatment under the United States gift tax laws does not constitute written consent to the transfer by the decedent.

(d) The proceeds of any policy of insurance on the decedent's life in excess of the net cash surrender value of the policy whether payable to the decedent's estate, a trust, or in any other manner.

(e) Any policy of insurance on the decedent's life maintained pursuant to a court order.

(f) The decedent's one-half of the property to which ss. 732.216-732.228 apply and real property that is community property under the laws of the jurisdiction where it is located.

(g) Property held in a qualifying special needs trust on the date of the decedent's death.

(h) Property included in the gross estate of the decedent for federal estate tax purposes solely because the decedent possessed a general power of appointment.

(i) Property which constitutes the protected homestead of the decedent whether held by the decedent or by a trust at the decedent's death.

Section 22. Effective October 1, 2001, paragraph (a) of subsection (5) of section 732.2055, Florida Statutes, is amended to read:

732.2055 Valuation of the elective estate.—For purposes of s. 732.2035, "value" means:

(5) In the case of all other property, the fair market value of the property on the date of the decedent's death, computed after deducting from the total value of the property:

(a) All claims, ~~other than claims for funeral expenses,~~ paid or payable from the elective estate; and

Section 23. Effective October 1, 2001, subsection (2) of section 732.2075, Florida Statutes, is amended to read:

732.2075 Sources from which elective share payable; abatement.—

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be apportioned among the direct recipients of the remaining elective estate in the following order of priority:

(a) Class 1.—The decedent's probate estate and revocable trusts.

(b) Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(2), (3), or (6) and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(5) and (7).

(c) Class 3.—Recipients of all other property interests, other than protected charitable interests, included in the elective estate ~~except interests for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift tax laws.~~

(d) Class 4.—Recipients of protected charitable lead interests, but only to the extent and at such times that contribution is permitted without disqualifying the charitable interest in that property for a deduction under the United States gift tax laws.

For purposes of this subsection, a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift tax laws. A protected charitable lead interest is a protected charitable interest where one or more deductible interests in charity precede some other nondeductible interest or interests in the property.

Section 24. Effective October 1, 2001, paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 732.2085, Florida Statutes, are amended to read:

732.2085 Liability of direct recipients and beneficiaries.—

(1) Only direct recipients of property included in the elective estate and the beneficiaries of the decedent's probate estate or of any trust that is a direct recipient, are liable to contribute toward satisfaction of the elective share.

(a) Within each of the classes described in s. 732.2075(2)(b), ~~and (c), and (d)~~, each direct recipient is liable in an amount equal to the value, as determined under s. 732.2055, of the proportional part of the liability for all members of the class.

(3) If a person pays the value of the property on the date of a sale or exchange or contributes all of the property received, as provided in paragraph (2)(b):

(a) No further contribution toward satisfaction of the elective share shall be required with respect to that ~~such~~ property.

Section 25. Effective October 1, 2001, paragraph (a) of subsection (1) and paragraph (d) of subsection (2) of section 732.2095, Florida Statutes, are amended to read:

732.2095 Valuation of property used to satisfy elective share.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Applicable valuation date” means:

1. In the case of transfers in satisfaction of the elective share, the date of the decedent’s death.

2. In the case of property held in a qualifying special needs trust on the date of the decedent’s death, the date of the decedent’s death.

3. In the case of other property irrevocably transferred to or for the benefit of the surviving spouse during the decedent’s life, the date of the transfer.

4. In the case of property distributed to the surviving spouse by the personal representative, the date of distribution.

5. Except as provided in subparagraphs 1., 2., and 3., in the case of property passing in trust for the surviving spouse, the date or dates the trust is funded in satisfaction of the elective share.

6. In the case of property described in s. 732.2035(2) or (3) ~~or~~ (4), the date of the decedent’s death.

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent’s death.

8. In the case of amounts payable to the surviving spouse under any plan or arrangement described in s. 732.2035(7), the date of the decedent’s death.

9. In all other cases, the date of the decedent’s death or the date the surviving spouse first comes into possession of the property, whichever occurs later.

(2) Except as provided in this subsection, the value of property for purposes of s. 732.2075 is the fair market value of the property on the applicable valuation date.

(d) If the surviving spouse has an interest in a trust that does not meet the requirements of either an elective share trust or a qualifying special needs trust, the value of the spouse’s interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of all of the spouse’s interests in the trust shall not exceed one-half of the value of the trust principal on the applicable valuation date.

Section 26. Effective October 1, 2001, section 732.2105, Florida Statutes, is amended to read:

732.2105 Effect of election on other interests.—

(1) The elective share shall be in addition to homestead, exempt property, and allowances as provided in part IV.

~~(2) If an election is filed, the balance of the elective estate, after the application of s. 732.2145(1), shall be administered as though the surviving spouse had predeceased the decedent.~~

Section 27. Effective October 1, 2001, subsection (2) of section 732.2125, Florida Statutes, is amended to read:

732.2125 Right of election; by whom exercisable.—The right of election may be exercised:

(2) With approval of the court having jurisdiction of the probate proceeding by an attorney in fact or a guardian of the property of the surviving spouse, with approval of the court having jurisdiction of the probate proceeding. The court shall determine the election as the best interests of the surviving spouse, during the spouse's probable lifetime, require.

Section 28. Effective October 1, 2001, section 732.2135, Florida Statutes, is amended to read:

732.2135 Time of election; extensions; withdrawal.—

(1) Except as provided in subsection (2), the election must be filed within the earlier of 6 months of the date of service of a copy of the first publication of notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1), the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. ~~After notice and hearing, the court~~ For good cause shown the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months of the decedent's death and before the court's order of contribution. If an election is withdrawn, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

Section 29. Effective October 1, 2001, subsections (1) and (4) of section 732.2145, Florida Statutes, are amended to read:

732.2145 Order of contribution; personal representative's duty to collect contribution.—

(1) The court shall determine the elective share and ~~shall order~~ contribution. All Contributions ~~shall~~ ~~are to~~ bear interest at the statutory rate ~~provided in s. 55.03(1) beginning 90 days after from the date of the order of contribution.~~ The order ~~of contribution~~ is prima facie correct in proceedings in any court or jurisdiction.

(4) Nothing in this section limits the independent right of the surviving spouse to collect the elective share as provided in the order of contribution, and that right is hereby conferred. If the surviving spouse brings an action to enforce ~~the an order of contribution~~, the judgment shall include the surviving spouse's costs and reasonable attorney's fees.

Section 30. Effective October 1, 2001, subsection (4) of section 732.2155, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

732.2155 Effective date; effect of prior waivers; transition rules.

(4) Notwithstanding anything in s. 732.2045(1)(a) to the contrary, any trust created by the decedent before the effective date of ~~ss. 732.201-732.2145 this section~~ that meets the requirements of an elective share trust is treated as if the decedent created the trust after the effective date of ~~these sections this subsection~~ and in satisfaction of the elective share.

(6) Sections 732.201-732.2155 do not affect any interest in property held, as of the decedent's death, in a trust, whether revocable or irrevocable, if:

(a) The property was an asset of the trust at all times between October 1, 1999 and the date of the decedent's death;

(b) The decedent was not married to the decedent's surviving spouse when the property was transferred to the trust; and

(c) The property was a nonmarital asset as defined in s. 61.075 immediately prior to the decedent's death.

Section 31. Subsection (2) of section 732.218, Florida Statutes, is amended to read:

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

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

Section 32. Section 732.219, Florida Statutes, is amended to read:

732.219 Disposition upon death.—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that ~~the~~ property is not in the elected estate ~~subject to the surviving spouse's right to elect against the will.~~

Section 33. Section 732.221, Florida Statutes, is amended to read:

732.221 Perfection of title of personal representative or beneficiary, heir, or devisee.—If the title to any property to which ss. 732.216-732.228 apply is held by the surviving spouse at the time of the decedent's death, the personal representative or a beneficiary ~~an heir or devisee~~ of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover whether any property held by the surviving spouse is property to which ss. 732.216-732.228 ~~these sections~~ apply, unless a written demand is made by a beneficiary ~~an heir, devisee, or creditor of the decedent~~ within 3 6 months after service of a copy the first publication of the notice of administration on the beneficiary or by a creditor within 3 months after the first publication of the notice to creditors.

Section 34. Subsections (1) and (2) of section 732.222, Florida Statutes, are amended to read:

732.222 Purchaser for value or lender.—

(1) If a surviving spouse has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes the his or her interest in the property free of any rights of the personal representative or a beneficiary ~~an heir or devisee~~ of the decedent.

(2) If a personal representative or a beneficiary ~~an heir or devisee~~ of the decedent has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes that his or her interest in the property free of any rights of the surviving spouse.

Section 35. Section 732.223, Florida Statutes, is amended to read:

732.223 Perfection of title of surviving spouse.—If the title to any property to which ss. 732.216-732.228 apply was held by the decedent at the time of the decedent's his or her death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the beneficiaries heirs or devisees of the decedent with the approval of the probate court. The probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply. The personal representative has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply unless a written demand is made by the surviving spouse or the spouse's successor

in interest within 3 6 months after service of a copy of the first publication of the notice of administration on the surviving spouse or the spouse's successor in interest.

Section 36. Section 732.302, Florida Statutes, is amended to read:

732.302 Pretermitted children.—When a testator omits to provide by in ~~his or her~~ will for any of his or her children born or adopted after making the will and the child has not received a part of the testator's property equivalent to a child's part by way of advancement, the child shall receive a share of the estate equal in value to that which the child ~~he or she~~ would have received if the testator had died intestate, unless:

(1) It appears from the will that the omission was intentional; or

(2) The testator had one or more children when the will was executed and devised substantially all the estate to the other parent of the pretermitted child and that other parent survived the testator and is entitled to take under the will.

The share of the estate that is assigned to the pretermitted child shall be obtained in accordance with s. 733.805.

Section 37. Section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(1) If not devised as permitted by law (1) the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent's death per stirpes.

(2) Subsection (1) shall not apply to ~~If the decedent was domiciled in Florida and resided on real property that the decedent and the surviving spouse owned as tenants by the entirety, the real property shall not be homestead property.~~

Section 38. Subsection (2) of section 732.4015, Florida Statutes, is amended to read:

732.4015 Devise of homestead.—

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor settlor of a trust described in s. 733.707(3) that is evidenced by a written instrument which is in existence at the time of the grantor's settlor's death as if the interest held in trust was owned by the grantor pursuant to which the settlor retained the right either alone or in conjunction with any other person to amend or revoke the trust at any time before his or her death.

(b) “Devise” includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor settlor of the trust, would be the grantor’s settlor’s homestead.

Section 39. Subsections (4) and (6) of section 732.402, Florida Statutes, are amended, and subsection (7) is added to said section, to read:

732.402 Exempt property.—

(4) Exempt property shall be in addition to protected homestead, statutory entitlements, and any property passing under to the surviving spouse or heirs of the decedent under s. 4, Art. X of the State Constitution or the decedent’s will, or by intestate succession, elective share, or family allowance.

(6) Persons entitled to exempt property shall be deemed to have waived their rights under this section unless a petition for determination of exempt property is filed by or on behalf of the persons entitled to the exempt property within 4 months after the date of service the first publication of the notice of administration or within 40 days from the date of termination of any proceeding involving the construction, admission to probate, or validity of the will or involving any other matter affecting any part of the estate subject to this section.

(7) Property determined as exempt under this section shall be excluded from the value of the estate before residuary, intestate, or pretermitted or elective shares are determined.

Section 40. Section 732.403, Florida Statutes, is amended to read:

732.403 Family allowance.—In addition to protected homestead and statutory entitlements exempt property, if the decedent was domiciled in Florida at the time of death, the surviving spouse and the decedent’s lineal heirs ~~whom the decedent was supporting or was obligated to support or who were in fact being supported by him or her~~ are entitled to a reasonable allowance in money out of the estate for their maintenance during administration. ~~After notice and hearing,~~ The court may order this allowance to be paid as a lump sum or in periodic installments. The allowance shall not exceed a total of ~~\$18,000~~ \$6,000. It shall be paid to the surviving spouse, if living, for the use of the spouse and dependent lineal heirs. If the surviving spouse is not living, it shall be paid to the lineal heirs or to the persons having their care and custody. If any lineal heir is not living with the surviving spouse, the allowance may be made partly to the lineal heir or ~~his or her~~ guardian or other person having the lineal heir’s care and custody and partly to the surviving spouse, as the needs of the dependent lineal heir and the surviving spouse appear. ~~The family allowance shall have the priority established by s. 733.707.~~ The family allowance is not chargeable against any benefit or share otherwise passing to the surviving spouse or to the dependent lineal heirs ~~by intestate succession, elective share, or the will of the decedent~~, unless the will otherwise provides. The death of any person entitled to a family allowance terminates the his or her right to that the part of the allowance not paid. For purposes of this section, the term “lineal heir”

or "lineal heirs" means lineal ascendants and lineal descendants of the decedent.

Section 41. Section 732.501, Florida Statutes, is amended to read:

732.501 Who may make a will.—Any person who is of sound mind and who is either 18 or more years of age or an emancipated minor ~~18 or more years of age who is of sound mind~~ may make a will.

Section 42. Paragraph (a) of subsection (1) and subsection (2) of section 732.502, Florida Statutes, are amended to read:

732.502 Execution of wills.—Every will must be in writing and executed as follows:

(1)(a) Testator's signature.—

- 1. The testator must sign the will at the end; or
- 2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's ~~his or her~~ direction.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where ~~the will was executed~~ ~~testator was at the time of execution~~. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

Section 43. Section 732.503, Florida Statutes, is amended to read:

732.503 Self-proof of will.—

(1) A will or codicil executed in conformity with s. 732.502(1) and (2) may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF FLORIDA
COUNTY OF

I, _____, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

.....
Testator

We, _____ and _____, have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

.....
Witness

.....
Witness

Acknowledged and subscribed before me by the testator, (type or print testator's name), who is personally known to me or who has produced (state type of identification – see s. 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by the witnesses, (type or print name of first witness) who is personally known to me or who has produced (state type of identification – see s. 117.05(5)(b)2.) as identification and (type or print name of second witness) who is personally known to me or who has produced (state type of identification – see s. 117.05(5)(b)2.) as identification, and subscribed by me in the presence of the testator and the subscribing witnesses, all on (date).

(Signature of Officer)

(Print, type, or stamp commissioned name and affix official seal)

(2) A will or codicil made self-proved under former law, or executed in another state and made self-proved under the laws of that state, shall be considered as self-proved under this section.

STATE OF
COUNTY OF

We,,, and the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as the testator's last will (codicil), that the testator (signed) (or directed another to sign for him or her), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

...(Testator)..
...(Witness)..
...(Witness)...

~~Subscribed and sworn to before me by, the testator who is personally known to me or who has produced ...(type of identification)... as identification, and by, a witness who is personally known to me or who has produced ...(type of identification)... as identification, and by, a witness who is personally known to me or who has produced ...(type of identification)... as identification, on, ... (year)....~~

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Section 44. Section 732.505, Florida Statutes, is amended to read:

732.505 Revocation by writing.—A will or codicil, or any part of either, is revoked:

(1) By a subsequent inconsistent will or codicil, even though the subsequent inconsistent will or codicil does not expressly revoke all previous wills or codicils, but the revocation extends only so far as the inconsistency exists.

(2) By a subsequent ~~written~~ will, codicil, or other writing executed with the same formalities required for the execution of wills declaring the revoca-

tion, if the same formalities required for the execution of wills are observed in the execution of the will, codicil, or other writing.

Section 45. Section 732.507, Florida Statutes, is amended to read:

732.507 Effect of subsequent marriage, birth, or dissolution of marriage.—

(1) Neither subsequent marriage, ~~nor subsequent marriage and birth, nor~~ adoption of lineal descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) Any provision ~~provisions~~ of a will executed by a married person ~~that, which provision~~ affects the spouse of that person, shall become void upon the divorce of that person or upon the dissolution or annulment of the marriage. After the dissolution, divorce, or annulment, the any such will shall be administered and construed as if the former spouse had died at the time of the dissolution, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise.

Section 46. Paragraph (d) of subsection (2) and subsections (3) and (6) of section 732.513, Florida Statutes, are amended to read:

732.513 Devises to trustee.—

(2) The devise shall not be invalid for any or all of the following reasons:

(d) Because the only res of the trust is the possible expectancy of receiving, as a named beneficiary, a devise under a will or death benefits as described in s. 733.808, and even though the testator or other person has reserved any or all rights of ownership in the such death benefit policy, contract, or plan, including the right to change the beneficiary.

(3) The devise shall dispose of property under the terms of the instrument that created the trust as previously or subsequently ~~theretofore or thereafter~~ amended.

~~(6) This section shall be cumulative to all laws touching upon the subject matter.~~

Section 47. Section 732.514, Florida Statutes, is amended to read:

732.514 Vesting of devises.—The death of the testator is the event that vests the right to devises unless the testator in the his or her will has provided that some other event must happen before a devise vests ~~shall vest~~.

Section 48. Section 732.515, Florida Statutes, is amended to read:

732.515 Separate writing identifying devises of tangible property.—A ~~will may refer to a written statement or list referred to in the decedent's will~~ shall to dispose of items of tangible personal property, other than property used in trade or business, not otherwise specifically disposed of by the will, ~~other than money and property used in trade or business.~~ To be admissible

under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing ~~may be referred to as one in existence at the time of the testator's death.~~ It may be prepared before or after the execution of the will. It may be altered by the testator after its preparation. It may be a writing that has no significance apart from its effect upon the dispositions made by the will. If more than one otherwise effective writing exists, then, to the extent of any conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each prior writing.

Section 49. Subsection (1) of section 732.6005, Florida Statutes, is amended to read:

732.6005 Rules of construction and intention.—

(1) The intention of the testator as expressed in the his or her will controls the legal effect of the testator's dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.

Section 50. Section 732.601, Florida Statutes, is amended to read:

732.601 Simultaneous Death Law.—Unless a contrary intention appears in the governing instrument:

(1) When title to property or its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if that person ~~he or she had survived, except as provided otherwise in this law.~~

(2) When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived.

(3) When there is insufficient evidence that two joint tenants or tenants by the entirety died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died, the property thus distributed shall be in the proportion that one bears to the ~~whole~~ number of joint tenants.

(4) When the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

~~(5) This law shall not apply in the case of wills, living trusts, deeds, or contracts of insurance in which provision has been made for distribution of property different from the provisions of this law.~~

Section 51. Section 732.603, Florida Statutes, is amended to read:

732.603 Antilapse; deceased devisee; class gifts.—Unless a contrary intention appears in the will:

(1) If a devisee or a beneficiary of a trust created by a will who is a grandparent, or a lineal descendant of a grandparent, of the testator:

(a) Is dead at the time of the execution of the will or at the termination of a trust interest created by a will,

(b) Fails to survive the testator, or

(c) Is required by the will to be treated as having if he or she predeceased the testator,

then the descendants of the devisee or beneficiary take per stirpes in place of the deceased devisee or beneficiary. A person who would have been a devisee under a class gift if that person ~~he or she~~ had survived the testator shall be a devisee for purposes of this section whether that person died his or her death occurred before or after the execution of the will.

(2) If a devisee or a beneficiary of a trust created by a will who is not a grandparent, or a descendant of a grandparent, of the testator:

(a) Is dead at the time of the execution of the will or at the termination of a trust interest created in a will,

(b) Fails to survive the testator, or

(c) Is required by the will to be treated as having if he or she predeceased the testator,

then the testamentary disposition to the devisee or beneficiary shall lapse unless an intention to substitute another ~~in his or her place~~ appears in the will.

Section 52. Subsection (2) of section 732.604, Florida Statutes, is amended to read:

732.604 Failure of testamentary provision.—

(2) Except as provided in s. 732.603, if the residue is devised to two or more persons and the ~~devisee to share of~~ one of the residuary devisees fails for any reason, ~~that devisee his or her share~~ passes to the other residuary devisee, or to the other residuary devisees in proportion to their interests in the residue.

Section 53. Section 732.605, Florida Statutes, is amended to read:

732.605 Change in securities; accessions; nonademption.—

(1) If the testator intended a specific devise of certain securities rather than their equivalent value, the specific devisee is entitled only to:

(a) As much of the devised securities as is a part of the estate at the time of the testator's death.

(b) Any additional or other securities of the same entity owned by the testator because of action initiated by the entity, excluding any acquired by exercise of purchase options.

(c) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.

(d) Securities of the same entity acquired as a result of a plan of reinvestment.

(2) Distributions before death with respect to ~~of~~ a specifically devised security, whether in cash or otherwise, which are not provided for in subsection (1) are not part of the specific devise.

Section 54. Subsection (1) and paragraph (d) of subsection (2) of section 732.606, Florida Statutes, are amended to read:

732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.—

(1) If specifically devised property is sold by a guardian of the property ~~for the care and maintenance of the ward~~ or if a condemnation award or insurance proceeds are paid to a guardian of the property ~~as a result of condemnation, fire, or casualty~~, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right ~~described in he or she has~~ under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(d) Property owned by the testator at ~~his or her~~ death as a result of foreclosure, or obtained instead of foreclosure, of the security for the specifically devised obligation.

Section 55. Subsection (1) of section 732.701, Florida Statutes, is amended to read:

732.701 Agreements concerning succession.—

(1) No agreement to make a will, to give a devise, not to revoke a will, not to revoke a devise, not to make a will, or not to make a devise shall be binding or enforceable unless the agreement is in writing and signed by the agreeing party in the presence of two attesting witnesses. Such an agreement executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of

the state or country where the agreement was executed, whether or not the agreeing party is a Florida resident at the time of death.

Section 56. Section 732.702, Florida Statutes, is amended to read:

732.702 Waiver of spousal ~~right to elect and of other~~ rights.—

(1) ~~The rights right of election of a surviving spouse, the rights of the surviving spouse as intestate successor or as a pretermitted spouse, and the rights of the surviving spouse to an elective share, intestate share, pretermitted share, homestead, exempt property, and family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights them, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts, agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver it provides to the contrary, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead property, exempt property, and family allowance, and preference in appointment as personal representative of an intestate estate, by the waiving party each spouse in the property of the other and a renunciation by the waiving party each of all benefits that would otherwise pass to the waiving party either from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver or property settlement.~~

(2) Each spouse shall make a fair disclosure to the other of that spouse's ~~his or her~~ estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage.

(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity, whether executed before or after marriage.

Section 57. Subsections (2), (3), (4), (5), (6), and (7) of section 732.801, Florida Statutes, are amended to read:

732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.—

(2) SCOPE OF RIGHT TO DISCLAIM.—

(a) A beneficiary may disclaim ~~his or her~~ succession to any interest in property that, unless disclaimed, would pass to the beneficiary:

1. By intestate succession or devise.
2. Under descent of homestead, exempt property, or family allowance or under s. 222.13.
3. Through exercise or nonexercise of a power of appointment exercisable by will.
4. Through testamentary exercise or nonexercise of a power of appointment exercisable by either deed or will.
5. As beneficiary of a testamentary trust.
6. As a beneficiary of a testamentary gift to any nontestamentary trust.
7. As donee of a power of appointment created by will.
8. By succession in any manner described in this subsection to a disclaimed interest.
9. In any manner not specifically enumerated herein under a testamentary instrument.

(b) Disclaimer may be made for a minor, incompetent, incapacitated person, or deceased beneficiary by the guardian or personal representative if the court having jurisdiction of the estate of the minor, incompetent, incapacitated person, or deceased beneficiary upon petition finds that the disclaimer:

1. Is in the best interests of those interested in the estate of the beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and
2. Is not detrimental to the best interests of the beneficiary.

~~The determination shall be made on a petition filed for that purpose and served on all interested persons.~~ If ordered by the court, the guardian or personal representative shall execute and record the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if ~~he or she~~ were living, of legal age, and competent.

(3) DISPOSITION OF DISCLAIMED INTERESTS.—

(a) Unless the decedent or a donee of a power of appointment has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that caused ~~him or her to become finally ascertained as a beneficiary and the disclaimant's interest to become indefeasibly fixed both in quality and quantity.~~ The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or other event. An interest in property disclaimed shall never vest in the disclaimant. If the provisions of s. 732.603 would have been applicable had the disclaimant in fact died immediately

preceding the death or other event, they shall be applicable to the disclaimed interest.

(b) ~~Unless the his or her disclaimer instrument so provides, a beneficiary who disclaims any interest that would pass to him or her in any manner described in subsection (2) shall not be excluded from sharing in any other interest to which he or she may be entitled in any manner described in the subsection, including subparagraph (2)(a)8., even though the interest includes disclaimed assets by virtue of the beneficiary's disclaimer.~~

(4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER INSTRUMENTS.—

(a) ~~To be~~ A disclaimer shall be in, a writing and shall declare the disclaimer and its extent, describe the interest in property disclaimed, and be ~~executed signed, witnessed, and acknowledged~~ in the manner provided for the conveyance of real property.

(b) A disclaimer shall be effective and irrevocable when the instrument is recorded by the clerk where the estate of the decedent is or has been administered. If no administration has been commenced, it may be recorded ~~recording may be made~~ with the clerk of any county where venue of administration is proper.

(c) The person disclaiming shall deliver or mail a copy of the disclaimer instrument to the personal representative, trustee, or other person having legal title to, or possession of, the property in which the disclaimed interest exists. No representative, trustee, or other person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is waived or barred ~~as hereinafter provided~~, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual notice of the facts constituting the waiver or bar of barring the right to disclaim.

(5) TIME FOR RECORDING DISCLAIMER.—~~To be effective~~ a disclaimer shall be recorded at any time after the creation of the interest, but in any event within 9 months after the event giving rise to the right to disclaim, including the death of the decedent; or, if the disclaimant is not finally ascertained as a beneficiary or the disclaimant's interest has not become indefeasibly fixed both in quality and quantity at the death of the decedent, then the disclaimer shall be recorded not later than 6 months after the event that would cause ~~the him or her to become finally ascertained and his or her interest to become indefeasibly fixed both in quality and quantity.~~ However, a disclaimer may be effective if recorded at any time after the creation of the interest, upon the written consent of all interested parties as provided in s. 731.302.

(6) WAIVER OR BAR TO RIGHT TO DISCLAIM.—

(a) The right to disclaim otherwise conferred by this section shall be barred if the disclaimant beneficiary is insolvent at the time of recording the disclaimer ~~the event giving rise to the right to disclaim~~ and also by:

1. Making a voluntary assignment or transfer of, a contract to assign or transfer, or an encumbrance of, an interest in real or personal property.
2. Giving a written waiver of the right to disclaim the succession to an interest in real or personal property.
3. Making any sale or other disposition of an interest in real or personal property pursuant to judicial process by the beneficiary before recording ~~he or she has recorded~~ a disclaimer.

(b) The acceptance, assignment, transfer, encumbrance, or written waiver of the right to disclaim a part of an interest in property, or the sale pursuant to judicial process of a part of an interest in property, shall not bar the right to disclaim any other part of the interest in property.

(7) EFFECT OF RESTRAINTS.—The right to disclaim granted by this section is ~~shall exist~~ irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction.

Section 58. Section 732.804, Florida Statutes, is amended to read:

732.804 Provisions relating to disposition of the body cremation.—~~Before issuance of letters, any person may carry out written instructions of the decedent relating to the decedent's body and funeral and burial arrangements. The fact that cremation occurred pursuant to a written direction provision of a will or any written contract signed by the decedent that the in which he or she expressed the intent that his or her body be cremated is a complete defense to a cause of action against any person acting or relying on that direction the personal representative or person providing the services.~~

Section 59. Section 732.901, Florida Statutes, is amended to read:

732.901 Production of wills.—

(1) The custodian of a will must deposit the will with the clerk of the court having venue of the estate of the decedent within 10 days after receiving information that the testator is dead. The custodian must supply the testator's date of death or social security number to the clerk upon deposit. ~~Willful failure to deposit the will with the clerk within the time period specified shall render the custodian responsible for all costs and damages sustained by anyone if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.~~

(2) ~~Upon~~ By petition and notice of it served on him or her, the custodian of any will may be compelled to produce and deposit the will as provided in subsection (1). All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to withholding ~~the deposit of the will.~~

Section 60. Section 732.910, Florida Statutes, is renumbered as section 765.510, Florida Statutes.

Section 61. Section 732.911, Florida Statutes, is renumbered as section 765.511, Florida Statutes.

Section 62. Section 732.912, Florida Statutes, is renumbered as section 765.512, Florida Statutes, and amended to read:

765.512 ~~732.912~~ Persons who may make an anatomical gift.—

(1) Any person who may make a will may give all or part of his or her body for any purpose specified in s. 765.510 ~~732.910~~, the gift to take effect upon death. An anatomical gift made by an adult donor and not revoked by the donor as provided in s. 765.516 ~~732.916~~ is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(2) If the decedent has executed an agreement concerning an anatomical gift, including signing an organ and tissue donor card, expressing his or her wish to donate in a living will or advance directive, or signifying his or her intent to donate on his or her driver's license or in some other written form has indicated his or her wish to make an anatomical gift, and in the absence of actual notice of contrary indications by the decedent, the surrogate designated by the decedent pursuant to part II of chapter 765 may give all or any part of the decedent's body for any purpose specified in s. 765.510 ~~732.910~~.

(3) If the decedent has not executed an agreement concerning an anatomical gift or designated a surrogate pursuant to part II of chapter 765 to make an anatomical gift pursuant to the conditions of subsection (2), a member of one of the classes of persons listed below, in the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in s. 765.510 ~~732.910~~:

- (a) The spouse of the decedent;
- (b) An adult son or daughter of the decedent;
- (c) Either parent of the decedent;
- (d) An adult brother or sister of the decedent;
- (e) A grandparent of the decedent;
- (f) A guardian of the person of the decedent at the time of his or her death; or
- (g) A representative ad litem who shall be appointed by a court of competent jurisdiction forthwith upon a petition heard ex parte filed by any person, which representative ad litem shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his or her body or body parts not be donated upon death;

but no gift shall be made by the spouse if any adult son or daughter objects, and provided that those of higher priority, if they are reasonably available, have been contacted and made aware of the proposed gift, and further provided that a reasonable search is made to show that there would have been no objection on religious grounds by the decedent.

(4) If the donee has actual notice of contrary indications by the decedent or, in the case of a spouse making the gift, an objection of an adult son or daughter or actual notice that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(5) The person authorized by subsection (3) may make the gift after the decedent's death or immediately before the decedent's death.

(6) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(7) Once the gift has been made, the rights of the donee are paramount to the rights of others, except as provided by s. 765.517 ~~732.917~~.

Section 63. Section 732.913, Florida Statutes, is renumbered as section 765.513, Florida Statutes.

Section 64. Section 732.914, Florida Statutes, is renumbered as section 765.514, Florida Statutes, and amended to read:

765.514 ~~732.914~~ Manner of executing anatomical gifts.—

(1) A gift of all or part of the body under s. 765.512(1) ~~732.912(1)~~ may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

(2)(a) A gift of all or part of the body under s. 765.512(1) ~~732.912(1)~~ may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's presence. If the donor cannot sign, the document may be signed for him or her at the donor's direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(b) The following form of written instrument shall be sufficient for any person to give all or part of his or her body for the purposes of this part:

UNIFORM DONOR CARD

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:

I give:

- (a) any needed organs or parts;
- (b) only the following organs or parts
 ...[Specify the organ(s) or part(s)]...

for the purpose of transplantation, therapy, medical research, or education;

- (c) my body for anatomical study if needed. Limitations or special wishes, if any:
 ...(If applicable, list specific donee)...

Signed by the donor and the following witnesses in the presence of each other:

...(Signature of donor)...	...(Date of birth of donor)...
...(Date signed)...	...(City and State)...
...(Witness)...	...(Witness)...
...(Address)...	...(Address)...

(3) The gift may be made to a donee specified by name. If the donee is not specified by name, the gift may be accepted by the attending physician as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee upon or following death in the absence of any expressed indication that the donor desired otherwise. However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(4) Notwithstanding s. ~~765.517(2)~~ ~~732.917(2)~~, the donor may designate in his or her will or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(5) Any gift by a member of a class designated in s. ~~765.512(3)~~ ~~732.912(3)~~ must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

Section 65. Section 732.915, Florida Statutes, is renumbered as section 765.515, Florida Statutes, and amended to read:

765.515 ~~732.915~~ Delivery of document; organ and tissue donor registry.—

(1) If a gift is made through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. ~~765.521~~ ~~732.921~~, the completed donor registration card shall be delivered to the Department of Highway

Safety and Motor Vehicles and processed in a manner specified in subsection (4), but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the Department of Highway Safety and Motor Vehicles shall be updated to reflect such withdrawal.

(2) If a gift is not made through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. ~~765.521~~ 732.921 and is made by the donor to a specified donee, the document, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. Such document may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or for facilitation of procedures after death.

(3) On the request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(4) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement an organ and tissue donor registry which shall record, through electronic means, organ and tissue donation documents submitted through the driver license identification program or by other sources. The registry shall be maintained in a manner which will allow, through electronic and telephonic methods, immediate access to organ and tissue donation documents 24 hours a day, 7 days a week. Hospitals, organ and tissue procurement agencies, and other parties identified by the agency by rule shall be allowed access through coded means to the information stored in the registry. Costs for the organ and tissue donor registry shall be paid from the Florida Organ and Tissue Donor Education and Procurement Trust Fund created by s. ~~765.52155~~ 732.92155. Funds deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund shall be utilized by the Agency for Health Care Administration for maintaining the organ and tissue donor registry and for organ and tissue donor education.

Section 66. Section 732.916, Florida Statutes, is renumbered as section 765.516, Florida Statutes.

Section 67. Section 732.917, Florida Statutes, is renumbered as section 765.517, Florida Statutes, and amended to read:

765.517 ~~732.917~~ Rights and duties at death.—

(1) The donee, as specified under the provisions of s. ~~765.515(2)~~ 732.915(2), may accept or reject the gift. If the donee accepts a gift of the entire body or a part of the body to be used for scientific purposes other than a transplant, the donee may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at the donor's death or, if there is no such physician, the physician who certifies the death. After death and in the absence of other qualified personnel, this physician may participate in, but shall not obstruct, the procedures to preserve the donor's organs or tissues and shall not be paid or reimbursed by, nor be associated with or employed by, an organ procurement organization, tissue bank, or eye bank. This physician shall not participate in the procedures for removing or transplanting a part.

(3) The organ procurement organization, tissue bank, or eye bank, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor's organs. These procedures do not include the surgical removal of an organ or penetrating any body cavity, specifically for the purpose of donation, until a properly executed donor card or document is located or, if a properly executed donor card or document cannot be located, a person specified in s. 765.512(3) ~~732.912(3)~~ has been located, has been notified of the death, and has granted legal permission for the donation.

(4) All reasonable additional expenses incurred in the procedures to preserve the donor's organs or tissues shall be reimbursed by the organ procurement organization, tissue bank, or eye bank.

(5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution for his or her acts in any criminal proceeding.

(6) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.

Section 68. Section 732.918, Florida Statutes, is renumbered as section 765.518, Florida Statutes.

Section 69. Section 732.9185, Florida Statutes, is renumbered as section 765.5185, Florida Statutes.

Section 70. Section 732.919, Florida Statutes, is renumbered as section 765.519, Florida Statutes.

Section 71. Section 732.921, Florida Statutes, is renumbered as section 765.521, Florida Statutes, and amended to read:

765.521 ~~732.921~~ Donations as part of driver license or identification card process.—

(1) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement a program encouraging and allowing persons to make anatomical gifts as a part of the process of issuing identification cards and issuing and renewing driver licenses. The donor registration card distributed by the Department of Highway Safety and Motor Vehicles shall include the material specified by s.

765.514(2)(b) ~~732.914(2)(b)~~ and may require such additional information, and include such additional material, as may be deemed necessary by that department. The Department of Highway Safety and Motor Vehicles shall also develop and implement a program to identify donors, which program shall include notations on identification cards, driver licenses, and driver records or such other methods as the department may develop. This program shall include, after an individual has completed a donor registration card, making a notation on the front of the driver license or identification card that clearly indicates the individual's intent to donate the individual's organs or tissue. A notation on an individual's driver license or identification card that the individual intends to donate organs or tissues is deemed sufficient to satisfy all requirements for consent to organ or tissue donation. The Agency for Health Care Administration shall provide the necessary supplies and forms through funds appropriated from general revenue or contributions from interested voluntary, nonprofit organizations. The Department of Highway Safety and Motor Vehicles shall provide the necessary recordkeeping system through funds appropriated from general revenue. The Department of Highway Safety and Motor Vehicles and the Agency for Health Care Administration shall incur no liability in connection with the performance of any acts authorized herein.

(2) The Department of Highway Safety and Motor Vehicles, after consultation with and concurrence by the Agency for Health Care Administration, shall adopt rules to implement the provisions of this section according to the provisions of chapter 120.

(3) Funds expended by the Agency for Health Care Administration to carry out the intent of this section shall not be taken from any funds appropriated for patient care.

Section 72. Section 732.9215, Florida Statutes, is renumbered as section 765.5215, Florida Statutes.

Section 73. Section 732.92155, Florida Statutes, is renumbered as section 765.52155, Florida Statutes.

Section 74. Section 732.9216, Florida Statutes, is renumbered as section 765.5216, Florida Statutes.

Section 75. Section 732.922, Florida Statutes, is renumbered as section 765.522, Florida Statutes, and amended to read:

765.522 ~~732.922~~ Duty of certain hospital administrators; liability of hospital administrators, organ procurement organizations, eye banks, and tissue banks.—

(1) When used in this section, "hospital" means any establishment licensed under chapter 395 except psychiatric and rehabilitation hospitals.

(2) Where, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator's designee shall, at or near the time of death, access the organ and tissue donor registry created by s. 765.515(4)

732.915(4) to ascertain the existence of a donor card or document executed by the decedent. In the absence of a donor card, organ donation sticker or organ donation imprint on a driver's license, or other properly executed document, the hospital administrator or designee shall request:

(a) The patient's health care surrogate, as permitted in s. 765.512(2) ~~732.912(2)~~; or

(b) If the patient does not have a surrogate, or the surrogate is not reasonably available, any of the persons specified in s. 765.512(3) ~~732.912(3)~~, in the order and manner of priority stated in s. 765.512(3) ~~732.912(3)~~,

to consent to the gift of all or any part of the decedent's body for any purpose specified in this part. Except as provided in s. 765.512 ~~732.912~~, in the absence of actual notice of opposition, consent need only be obtained from the person or persons in the highest priority class reasonably available.

(3) A gift made pursuant to a request required by this section shall be executed pursuant to s. 765.514 ~~732.914~~.

(4) The Agency for Health Care Administration shall establish rules and guidelines concerning the education of individuals who may be designated to perform the request and the procedures to be used in making the request. The agency is authorized to adopt rules concerning the documentation of the request, where such request is made.

(5) There shall be no civil or criminal liability against any organ procurement organization, eye bank, or tissue bank certified under s. 381.6022, or against any hospital or hospital administrator or designee, when complying with the provisions of this part and the rules of the Agency for Health Care Administration or when, in the exercise of reasonable care, a request for organ donation is inappropriate and the gift is not made according to this part and the rules of the Agency for Health Care Administration.

(6) The hospital administrator or a designee shall, at or near the time of death of a potential organ donor, directly notify the affiliated Health Care Financing Administration designated organ procurement organization of the potential organ donor. This organ procurement organization must offer any organ from such a donor first to patients on a Florida-based local or state organ sharing transplant list. For the purpose of this subsection, the term "transplant list" includes certain categories of national or regional organ sharing for patients of exceptional need or exceptional match, as approved or mandated by the United Network for Organ Sharing. This notification must not be made to a tissue bank or eye bank in lieu of the organ procurement organization unless the tissue bank or eye bank is also a Health Care Financing Administration designated organ procurement organization.

Section 76. Paragraph (h) of subsection (3) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.—

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(h) Notwithstanding the provisions of paragraph (a), informed consent is not required:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule including the following situations:

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

b. Testing for HIV by a medical examiner in accordance with s. 406.11.

2. Those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies when the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, obtaining informed consent would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without informed consent.

5. When HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to the provisions of s. 775.0877, s. 951.27, or s. 960.003; however, the results of any HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003.

7. When an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0032, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. When human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. ~~765.5185~~ 732.9185 or enucleation of the eyes as authorized by s. ~~765.519~~ 732.919.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice and where a blood sample is available that was taken from that individual voluntarily by medical personnel for other purposes. The term "medical personnel" includes a licensed or certified health care professional; an employee of a health care professional or health care facility; employees of a laboratory licensed under chapter 483; personnel of a blood bank or plasma center; a medical student or other student who is receiving training as a health care professional at a health care facility; and a paramedic or emergency medical technician certified by the department to perform life-support procedures under s. 401.23.

a. Prior to performance of an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. The individual's refusal to consent and all information concerning the performance of an HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to obtain consent shall be made and all attempts must be documented. If the individual cannot be found, an HIV test may be conducted on the available blood sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel.

c. Costs of any HIV test of a blood sample performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel must either be tested for HIV pursuant to this section or provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample is not available, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test prior to the testing. The individual's refusal to consent, and all information concerning the performance of an HIV test and its result, shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel or nonmedical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

c. Costs of any HIV test performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel or nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received

and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample was not obtained during treatment for the medical emergency, the medical personnel, the employer of the medical personnel acting on behalf of the employee, or the nonmedical personnel may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner or attending physician upon an individual who expired or could not be resuscitated while receiving emergency medical assistance or care and who was the source of a significant exposure to medical or nonmedical personnel providing such assistance or care.

a. HIV testing may be conducted only after a licensed physician documents in the medical record of the medical personnel or nonmedical personnel that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

b. Costs of any HIV test performed under this subparagraph may not be charged to the deceased or to the family of the deceased person.

c. For the provisions of this subparagraph to be applicable, the medical personnel or nonmedical personnel must be tested for HIV under this section or must provide the results of an HIV test taken within 6 months before the significant exposure if such test results are negative.

d. A person who receives the results of an HIV test pursuant to this subparagraph shall comply with paragraph (e).

13. For the performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant as necessary to provide appropriate care and treatment of the infant when, after a reasonable attempt, a parent cannot be contacted to provide consent. The medical records of the infant shall reflect the reason consent of the parent was not initially obtained. Test results shall be provided to the parent when the parent is located.

14. For the performance of HIV testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive.

15. For the performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

Section 77. Paragraph (c) of subsection (2) of section 381.0041, Florida Statutes, is amended to read:

381.0041 Donation and transfer of human tissue; testing requirements.—

(2) Notwithstanding the provisions of subsection (1), written, informed consent to perform testing shall not be required:

(c) When an unrevoked anatomical gift has been made pursuant to s. ~~765.514~~ ~~732.914~~, by will or other written instrument, and the donor is deceased or incompetent.

Section 78. Section 733.101, Florida Statutes, is amended to read:

733.101 Venue of probate proceedings.—

(1) The venue ~~for~~ ~~of~~ probate of ~~all~~ wills and granting of letters shall be:

(a) In the county in this state where the decedent was domiciled ~~had his or her domicile~~.

(b) If the decedent had no domicile in this state, then in any county where the decedent's decedent was possessed of any property is located.

(c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

(2) For the purpose of this section, a married woman whose husband is an alien or a nonresident of Florida may establish or designate a separate domicile in this state.

(3) ~~Whenever a~~ ~~When any~~ proceeding is filed laying venue in an improper ~~the wrong~~ county, the court may transfer the action in the same manner as provided in the Florida Rules of Civil Procedure. Any action taken by the court or the parties before the transfer is not affected by ~~because of~~ the improper venue.

Section 79. Subsection (2) of section 733.103, Florida Statutes, is amended to read:

733.103 Effect of probate.—

(2) In any collateral action or proceeding relating to devised property, the probate of a will in Florida shall be conclusive of its due execution; that it was executed by a competent testator, free of fraud, duress, mistake, and undue influence; and ~~of the fact that the will was unrevoked on the testator's death~~.

Section 80. Section 733.104, Florida Statutes, is amended to read:

733.104 Suspension of statutes of limitation in favor of the personal representative.—

(1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, the action may be commenced by that person's ~~his or her~~ personal

~~representative before the later of the expiration of the time limited for the commencement of the action or 12 months after the expiration and within 12 months from the date of the decedent's death.~~

(2) If a person against whom a cause of action exists dies before the expiration of the time limited for commencement of the action and the cause of action survives, if a claim is timely filed shall be filed on the cause of action, and it shall then proceed as other claims against the estate, notwithstanding the expiration of the time limited for commencement of the action shall not apply.

Section 81. Section 733.105, Florida Statutes, is amended to read:

733.105 Determination of beneficiaries.—

(1) When property passes by intestate succession or ~~under a will to a person not sufficiently identified in the will~~ is unclear and there is the personal representative is in doubt about:

- (a) Who is entitled to receive any part of the property it or part of it, or
- (b) The shares and amounts that any person is entitled to receive,

~~any interested person the personal representative may petition the court to determine beneficiaries or their shares file a petition setting forth the names, residences, and post office addresses of all persons in interest, except creditors of the decedent, so far as known or ascertainable by diligent search and inquiry, and the nature of their respective interests, designating those who are believed by the personal representative to be minors or incompetents and stating whether those so designated are under legal guardianship in this state. If the personal representative believes that there are, or may be, persons whose names are not known to him or her who have claims against, or interest in, the estate as heirs or devisees, the petition shall so state.~~

(2) ~~After formal notice and hearing, the court shall enter an order determining the heirs or devisees or the shares and amounts they are entitled to receive, or both. Any personal representative who makes distribution or takes any other action pursuant to an the order determining beneficiaries shall be fully protected.~~

(3) ~~When it is necessary to determine who are or were the heirs or devisees, the court may make a determination, on the petition of any interested person, in like proceedings and after formal notice, irrespective of whether the estate of the deceased person is administered or, if administered, whether the administration of the estate has been closed or the personal representative discharged. A separate civil action to determine beneficiaries may be brought under this subsection when an estate has not been is not being administered.~~

Section 82. Subsections (2), (3), and (4) of section 733.106, Florida Statutes, are amended to read:

733.106 Costs and attorney's attorney fees.—

(2) A person nominated as personal representative ~~of the last known will, or any proponent of a the will if the person so nominated does not act within a reasonable time, if in good faith justified in offering the will in due form for probate, shall receive his or her costs and attorney's attorney fees from out of the estate even though probate is denied or revoked he or she is unsuccessful.~~

(3) Any attorney who has rendered services to an estate may be awarded reasonable compensation from the estate apply for an order awarding attorney fees, and after informal notice to the personal representative and all persons bearing the impact of the payment the court shall enter its order on the petition.

(4) When costs and attorney's attorney fees are to be paid from out of the estate, the court may, ~~in its discretion,~~ direct from what part of the estate they shall be paid.

Section 83. Section 733.107, Florida Statutes, is amended to read:

733.107 Burden of proof in contests.—In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

Section 84. Section 733.109, Florida Statutes, is amended to read:

733.109 Revocation of probate.—

(1) A proceeding to revoke the probate of a will shall be brought in the court having jurisdiction over the administration. Any interested person, including a beneficiary under a prior will, ~~unless except those~~ barred under s. 733.212 or s. 733.2123, may commence the proceeding, before final discharge of the personal representative, ~~petition the court in which the will was admitted to probate for revocation of probate.~~

(a) ~~The petition shall state the interest of the petitioner and the grounds for revocation.~~

(b) ~~The petition shall be served upon the personal representative and all interested persons by formal notice, and thereafter proceedings shall be conducted as an adversary proceeding under the rules of civil procedure.~~

(2) Pending the determination of any petition for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced, except that no distribution may be made to beneficiaries devisees in contravention of the rights of those who, but for the will, would be entitled to the property disposed of.

(3) Revocation of probate of a will shall not affect or impair the title to ~~the property theretofore~~ purchased in good faith for value from the personal representative prior to an order of revocation.

Section 85. Subsection (3) of section 733.201, Florida Statutes, is amended to read:

733.201 Proof of wills.—

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incompetent after the execution of the will or their testimony cannot be obtained within a reasonable time, a will may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not the nominated personal representative ~~he or she~~ is interested in the estate, or upon the oath of any person having no interest in the estate under the will stating, that the person ~~he or she~~ believes the writing exhibited to be the true last will of the decedent.

Section 86. Section 733.202, Florida Statutes, is amended to read:

733.202 Petition.—Any interested person may petition for administration.

~~(1) A verified petition for administration may be filed by any interested person.~~

~~(2) The petition for administration shall contain:~~

~~(a) A statement of the interest of the petitioner, the petitioner's name and address, and the name and office address of his or her attorney.~~

~~(b) The name, last known address, social security number, and date and place of death of the decedent and the state and county of the decedent's domicile.~~

~~(c) So far as is known, the names and addresses of the beneficiaries and the dates of birth of any who are minors.~~

~~(d) A statement showing venue.~~

~~(e) The priority under part III of the person whose appointment as the personal representative is sought.~~

~~(f) A statement of the approximate value and nature of the assets so the clerk can ascertain the amount of the filing fee and the court can determine the amount of any bond authorized by this code.~~

~~(3) If the decedent was a nonresident of this state, the petition shall state whether domiciliary proceedings are pending in another state or country, if known, and, if so, the name and address of the foreign personal representative and the court issuing letters.~~

~~(4) In an intestate estate, the petition shall:~~

~~(a) State that after the exercise of reasonable diligence the petitioner is unaware of any unrevoked wills or codicils or, if the petitioner is aware of any unrevoked wills or codicils, why the wills or codicils are not being probated, or~~

~~(b) Otherwise give the facts concerning the will or codicil.~~

~~(5) In a testate estate, the petition shall:~~

~~(a) Identify all unrevoked wills and codicils being presented for probate.~~

~~(b) State that the petitioner is unaware of any other unrevoked will or codicil or, if the petitioner is aware of any other unrevoked will or codicil, why the other will or codicil is not being probated.~~

~~(c) State that the original of the decedent's last will is in the possession of the court or accompanies the petition or that an authenticated copy of a will probated in another jurisdiction accompanies the petition.~~

Section 87. Section 733.203, Florida Statutes, is repealed:

~~733.203 Notice; when required.—~~

~~(1) If a caveat has been filed by an heir or a devisee under a will other than that being offered for probate, the procedure provided for in s. 733.2123 shall be followed.~~

~~(2) Except as may otherwise be provided in this part, no notice need be given of the petition for administration or of the order granting letters when it appears that the petitioner is entitled to preference of appointment. Before letters shall be granted to any person who is not entitled to preference, formal notice shall be served on all known persons qualified to act as personal representative and entitled to preference equal to or greater than the applicant, unless those entitled to preference waive it in writing.~~

Section 88. Subsection (2) of section 733.204, Florida Statutes, is amended to read:

733.204 Probate of a will written in a foreign language.—

~~(2) In admitting the will to probate, the court shall establish its correct English translation. If the original will is not or cannot be filed, a photographic copy of the original will shall be filed. At any time during the administration any interested person may have the correctness of the translation, or any part, redetermined after formal notice to all other interested persons. No personal representative who complies in good faith with the English translation of the will as may then be established by the court shall thereafter be held liable for doing as a result of having done so.~~

Section 89. Section 733.205, Florida Statutes, is amended to read:

733.205 Probate of notarial will.—

(1) When a copy of a notarial will in the possession of a notary entitled to its custody in a foreign state or country, the laws of which state or country require that the will remain in the custody of the such notary, duly authenticated by the notary, whose official position, signature, and seal of office are further authenticated by an American consul, vice consul, or other American consular officer within whose jurisdiction the notary is a resident, is pres-

ented to the court, it may be admitted to probate if the original could have been admitted to probate in this state.

(2) The duly authenticated copy shall be prima facie evidence of its purported execution and of the facts stated in the certificate in compliance with subsection (1).

(3) Any interested person ~~notified~~ may oppose the probate of such a notarial will or may petition for revocation of probate of such a notarial will, as in the ~~case of~~ original probate of a will in this state.

Section 90. Subsection (3) of section 733.206, Florida Statutes, is amended to read:

733.206 Probate of will of resident after foreign probate.—

(3) Any interested person may oppose the probate of the will, or may petition for revocation of the probate of the will, as in ~~the case of~~ the original probate of a will in this state.

Section 91. Section 733.207, Florida Statutes, is amended to read:

733.207 Establishment and probate of lost or destroyed will.—Any interested person may establish the full and precise terms of a lost or destroyed will and offer the will for probate.

~~(1) The establishment and probate of a lost or destroyed will shall be in one proceeding. The court shall recite, and thereby establish and preserve, the full and precise terms and provisions of the will in the order admitting it to probate.~~

~~(2) The petition for probate of a lost or destroyed will shall contain a copy of the will or its substance. The testimony of each witness must be reduced to writing and filed and shall be evidence in any contest of the will if the witness has died or moved from the state.~~

~~(3) No lost or destroyed will shall be admitted to probate unless formal notice has been given to those who, but for the will, would be entitled to the property thereby devised. The specific content of the will must be clearly and distinctly proved by the testimony of two disinterested witnesses, or, if a correct copy is provided, it shall be proved by one disinterested witness.~~

Section 92. Section 733.208, Florida Statutes, is amended to read:

733.208 Discovery of later will.—On the discovery of a later will or codicil expressly or impliedly revoking the probated will in whole or in part, pending or during administration, any interested person may petition to revoke the probate of the earlier will or to probate the later will or codicil offer the later will for probate. The proceedings shall be similar to those for revocation of probate. No later will or codicil may be offered after the testate or intestate estate has been completely administered and the personal representative discharged closing of the estate.

Section 93. Section 733.209, Florida Statutes, is amended to read:

733.209 Estates of missing persons.—Any interested person may petition to administer the estate of a missing person; however, no personal representative shall be appointed until the court determines the missing person is dead. The estates of missing persons shall be administered in the same manner as other estates. A petition for administration of the estate shall request entry of an order declaring the death of a missing person prior to appointing a personal representative and commencing administration.

Section 94. Section 733.212, Florida Statutes, is amended to read:

733.212 Notice of administration; filing of objections and claims.—

~~(1) The personal representative shall promptly publish a notice of administration. The notice shall 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, and the name and address of the personal representative's attorney and state the date of first publication. The notice shall require all interested persons to file with the court:~~

~~(a) All claims against the estate within the time periods set forth in s. 733.702, or be forever barred.~~

~~(b) Any objection by an interested person on whom notice was served that challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court within the later of 3 months after the date of the first publication of the notice or 30 days after the date of service of a copy of the notice on the objecting person.~~

~~(2) Publication shall be once a week for 2 consecutive weeks, two publications being sufficient, 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.~~

(1)(3) The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative:

(a) The decedent's surviving spouse;

(b) Beneficiaries; and

(c) The trustee of any trust described in s. 733.707(3); and, of which the decedent was grantor

(d) Persons who may be entitled to exempt property

in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees under a known prior will or heirs or others who claim or may claim an interest in the estate.

(2) The notice shall state the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, whether the estate is testate or intestate, and, if testate, the date of the will and any codicils, the name and address of the personal representative, and the name and address of the personal representative's attorney. The notice shall state that interested persons are required to file with the court any objection by an interested person on whom the notice was served that challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court within 3 months after the date of service of a copy of the notice of administration on the objecting person.

(3) Any interested person on whom a copy of the notice of administration was served must object to the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules within 3 months after the date of service of a copy of the notice of administration on the objecting person or those objections are forever barred. The appointment of a personal representative or a successor personal representative shall not extend or renew the period for filing objections under this section, unless a new will or codicil is admitted.

~~(4)(a) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable and shall serve on those creditors a copy of the notice within 3 months after the first publication of the notice. Under s. 409.9101, the Agency for Health Care Administration is considered a reasonably ascertainable creditor in instances where the decedent had received Medicaid assistance for medical care after reaching 55 years of age. Impracticable and extended searches are not required. Service is not required on any creditor who has filed a claim as provided in this part; a creditor whose claim has been paid in full; or a creditor whose claim is listed in a personal representative's timely proof of claim if the personal representative notified the creditor of that listing.~~

~~(4)(b) The personal representative is not individually liable to any person for giving notice under this section subsection, regardless of whether it is later determined that such notice was not required by this section. The service of notice in accordance with this section subsection shall not be construed as conferring any right admitting the validity or enforceability of a claim.~~

~~(5)(c) If the personal representative in good faith fails to give notice required by this section subsection, the personal representative is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.~~

~~(5) Objections under paragraph (1)(b), by persons on whom notice was served, that are not filed within the later of 3 months after the date of first publication of the notice or 30 days after the date of service of a copy of the notice on the objecting person are forever barred.~~

(6) If a will or codicil is subsequently admitted to probate, the personal representative shall promptly serve a copy of a new notice of administration as required for an initial will admission. Claims under paragraph (1)(a) are barred as provided in s. 733.702.

Section 95. Section 733.2121, Florida Statutes, is created to read:

733.2121 Notice to creditors; filing of claims.—

(1) Unless creditors' claims are otherwise barred by s. 733.710, the personal representative shall promptly publish a notice to creditors. The notice shall 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. The notice shall state that creditors must file claims against the estate with the court within the time periods set forth in ss. 733.702 and 733.710, or be forever barred.

(2) Publication shall 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.

(3)(a) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable, even if the claims are unmatured, contingent, or unliquidated, and shall promptly serve a copy of the notice on those creditors. Impracticable and extended searches are not required. 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.

(b) The personal representative is not individually liable to any person for giving notice under this section, even if it is later determined that notice was not required. The service of notice to creditors in accordance with this section shall not be construed as admitting the validity or enforceability of a claim.

(c) If the personal representative in good faith fails to give notice required by this section, the personal representative is not liable to any person for the failure. Liability, if any, for the failure is on the estate.

(d) If a decedent at the time of death was 55 years of age or older, the personal representative shall promptly serve a copy of the notice to creditors on the Agency for Health Care Administration within 3 months after the first publication of the notice to creditors, unless the agency has already filed a statement of claim in the estate proceedings.

(e) If the Department of Revenue has not previously been served with a copy of the notice to creditors, then service of the inventory on the Department of Revenue shall be the equivalent of service of a copy of the notice to creditors.

(4) Claims are barred as provided in ss. 733.702 and 733.710.

Section 96. Section 733.2123, Florida Statutes, is amended to read:

733.2123 Adjudication before issuance of letters.—A petitioner may serve formal notice of ~~the his or her~~ petition for administration on interested persons. A copy of the will offered for proposed to be admitted to probate shall be attached to the notice. No person who is served with formal notice of the petition for administration prior to the issuance of letters or who has waived notice may challenge the validity of the will, testacy of the decedent, qualifications of the personal representative, venue, or jurisdiction of the court, except in ~~connection with~~ the proceedings before issuance of letters.

Section 97. Section 733.213, Florida Statutes, is amended to read:

733.213 Probate as prerequisite to judicial petition for construction of will.—A will may not be construed until it has been admitted to probate ~~No pleading seeking construction of a will may be maintained until the will has first been probated.~~

Section 98. Section 733.301, Florida Statutes, is amended to read:

733.301 Preference in appointment of personal representative.—

(1) In the granting of letters of administration, the following order of preference preferences shall be observed:

(a)(1) In testate estates:

1.(a) The personal representative, or his or her successor, nominated by the will or pursuant to a power conferred in the will.

2.(b) The person selected by a majority in interest of the persons entitled to the estate.

3.(c) A devisee under the will. If more than one devisee applies, the court may select ~~exercise its discretion in selecting~~ the one best qualified.

(b)(2) In intestate estates:

1.(a) The surviving spouse.

2.(b) The person selected by a majority in interest of the heirs.

3.(c) The heir nearest in degree. If more than one applies, the court may select ~~exercise its discretion in selecting~~ the one best qualified ~~for the office.~~

(2)(3) A guardian of the property of a ward who if competent would be entitled to appointment as, or to select, the a personal representative may exercise the right to select the personal representative.

(3)(4) In either a testate or an intestate estate, if no application is made by any of the persons described named in subsection (1) ~~or subsection (2)~~, the court shall appoint a capable person; but no person may be appointed under this subsection:

(a) Who works for, or holds public office under, the court.

(b) Who is employed by, or holds office under, any judge exercising probate jurisdiction.

~~(4)~~(5) After letters have been granted in either a testate or an intestate estate, if a person who was entitled to, and has not waived, preference over the person appointed at the time of the ~~his or her~~ appointment and on whom formal notice was not served seeks the appointment, the letters granted may be revoked and the person entitled to preference may have letters granted ~~to him or her~~ after formal notice and hearing.

~~(5)~~(6) After letters have been granted in either a testate or an intestate estate, if any will is subsequently admitted to probate the letters shall be revoked and new letters granted ~~as provided in subsection (4)~~.

Section 99. Section 733.302, Florida Statutes, is amended to read:

733.302 Who may be appointed personal representative.—Subject to the limitations in this part, any person who is sui juris and who is a resident of Florida at the time of the death of the person whose estate is to be administered ~~he or she seeks to administer~~ is qualified to act as personal representative in Florida. ~~A person who has been convicted of a felony or who, from sickness, intemperance, or want of understanding, is incompetent to discharge the duties of a personal representative is not qualified.~~

Section 100. Subsections (1) and (2) of section 733.305, Florida Statutes, are amended to read:

733.305 Trust companies and other corporations and associations.—

(1) All trust companies incorporated under the laws of Florida the state, all state banking corporations and state savings associations authorized and qualified to exercise fiduciary powers in Florida, and all national banking associations and federal savings and loan associations authorized and qualified to exercise fiduciary powers in Florida shall be entitled to act as personal representatives and curators of estates.

(2) When a qualified corporation has been named as a personal representative in a will and subsequently thereafter transfers its business and assets to, consolidates or merges with, or is in any manner provided by law succeeded by, another qualified corporation, on the death of the testator, the successor corporation may qualify as personal representative, ~~and the court may issue letters to the successor corporation unless the will provides otherwise.~~

Section 101. Section 733.306, Florida Statutes, is amended to read:

733.306 Effect of appointment of debtor.—The appointment of a debtor as personal representative shall not extinguish the debt due to the decedent. ~~This section shall not prevent a testator from releasing a debtor by will.~~

Section 102. Section 733.307, Florida Statutes, is amended to read:

733.307 Succession of administration.—~~The No personal representative of the estate of a deceased personal representative is not as such shall be authorized to administer the estate of the first decedent. On the death of a the sole or surviving personal representative, the court shall appoint a successor personal representative to complete the administration of the estate.~~

Section 103. Section 733.308, Florida Statutes, is amended to read:

733.308 Administrator ad litem.—~~When it is necessary that an estate must be represented and the there is no personal representative is unable to do so of the estate, the court shall appoint an administrator ad litem without bond to represent the estate in that for that particular proceeding. The fact that the personal representative is seeking reimbursement for claims against the decedent paid by the personal representative does not require appointment of an administrator ad litem.~~

Section 104. Section 733.309, Florida Statutes, is amended to read:

733.309 Executor de son tort.—No person shall be liable to a creditor of a decedent as executor de son tort, but any person taking, converting, or intermeddling with the property of a decedent shall be liable to the personal representative or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by the his or her wrongful action. This section shall not be construed to prevent a creditor of a decedent from suing anyone in possession of property fraudulently conveyed by the decedent to set aside the fraudulent conveyance.

Section 105. Section 733.310, Florida Statutes, is created to read:

733.310 Personal representative not qualified.—Any time a personal representative knows or should have known that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting forth the reasons. A personal representative who fails to comply with this section shall be personally liable for costs, including attorney's fees, incurred in any removal proceeding, if the personal representative is removed. This liability shall be cumulative to any other provided by law.

Section 106. Section 733.401, Florida Statutes, is repealed:

~~733.401—Issuance of letters.—~~

~~(1) After the petition for administration is filed:~~

~~(a) The will, if any, shall be proved as provided elsewhere in this code and shall be admitted to probate.~~

~~(b) The court shall appoint the person entitled and qualified to be personal representative.~~

~~(c) The court shall determine the amount of any bond required under this part. The clerk may approve the bond in the amount determined by the court and shall not charge a service fee.~~

~~(d) Any required oath or designation of, and acceptance by, a resident agent shall be filed.~~

~~(2) Upon compliance with all of the foregoing, letters shall be issued to the personal representative.~~

~~(3) Mistaken noncompliance with any of the requirements of subsection (1) shall not be jurisdictional.~~

Section 107. Section 733.402, Florida Statutes, is amended to read:

733.402 Bond of fiduciary ~~personal representative~~; when required; form.—

(1) ~~Unless the bond requirement has been waived by the will or by the court testator waived the requirement,~~ every fiduciary person to whom letters are granted shall execute and file a bond with surety, as defined in s. 45.011, to be approved by the clerk ~~without a service fee~~. The bond shall be payable to the Governor and the Governor's successors in office, conditioned on the performance of all duties as personal representative according to law. The bond must be joint and several.

(2) ~~No bond executed by a personal representative or curator shall be void or invalid because of an informality in it or an informality or illegality in the appointment of the fiduciary. The bond shall have the same force as if the appointment had been legally made and the bond executed in proper form.~~

(3) The requirements of this section shall not apply to banks and trust companies authorized by law to act as personal representative.

(4) On petition by any interested person or on the court's own motion, the court may waive the requirement of filing a bond, require a bond, increase or decrease the bond, or require additional surety.

Section 108. Section 733.403, Florida Statutes, is amended to read:

733.403 Amount of bond.—

(1) All bonds required by this part shall be in the penal sum that the court deems sufficient after consideration of the gross value of the estate, the relationship of the personal representative to the beneficiaries, exempt property and any family allowance, the type and nature of assets, known creditors, and liens and encumbrances on the assets.

~~(2) On petition by any interested person or on the court's own motion, the court may waive the requirement of filing a bond, require a personal representative or curator to give bond, increase or decrease the bond, or require additional surety.~~

Section 109. Section 733.404, Florida Statutes, is amended to read:

733.404 Liability of surety.—No surety for any personal representative or curator shall be charged beyond the value of the assets of an estate

because of any omission or mistake in pleading or of false pleading of the personal representative or curator.

Section 110. Section 733.405, Florida Statutes, is amended to read:

733.405 Release of surety.—

(1) Subject to the limitations of this section, on the petition of any interested person, the surety is entitled to be released from liability for the future acts and omissions of the fiduciary. On petitioning the surety, or the personal representative of a surety, on the bond of any personal representative or curator shall be entitled as a matter of right to be released from future liability upon the bond.

(2) Pending the hearing of the petition, the court may restrain the fiduciary principal from acting in his or her representative capacity, except to preserve the estate.

(3) On hearing, the court shall enter an order prescribing the amount of the new bond for the fiduciary personal representative or curator and the date when the bond shall be filed. If the fiduciary principal fails to give the new bond, the fiduciary he or she shall be removed at once, and further proceedings shall be had as in cases of removal.

(4) The original surety or sureties shall remain be liable in accordance with the terms of its original bond for all acts and omissions of the fiduciary that occur prior to personal representative or surety until he or she has given the approval of the new surety and filing and approval of the bond and, after the giving of the new bond, shall remain liable for all the principal's acts to the time of the filing and approval of the new bond. The new surety shall be liable on its bond for the principal's acts only after the filing and approval of the new bond.

Section 111. Section 733.406, Florida Statutes, is amended to read:

733.406 Bond premium allowable as expense of administration or costs.—A personal representative Any receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give bond shall pay the reasonable premium as an expense of administration as such, may include as part of his or her lawful expense such reasonable sum paid such an insurer for such suretyship not exceeding 1 percent per annum on the amount of the bond, as the head of department, board, court, judge or officer by whom, or the court or body in which, he or she was appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such an insurer executing or guaranteeing any bond or undertaking therein.

Section 112. Section 733.501, Florida Statutes, is amended to read:

733.501 Curators.—

(1) When it is necessary, the court may appoint a curator after and issue letters of curatorship to take charge of the estate of a decedent until letters

~~are granted. If the person entitled to letters is a resident of the county where the property is situated, no curator shall be appointed until formal notice is given to the person apparently so entitled to letters of administration. The curator may be authorized to perform any duty or function of a personal representative. If there is great danger that any of the decedent's property is likely to wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would be delayed by giving notice, the court may appoint a curator without giving notice. On appointment, the court shall direct the person in possession of the effects of the decedent to deliver them to the curator. The order may be enforced by contempt.~~

~~(2) If there is great danger that the property or any part of it is likely to be wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would be delayed by giving notice, the court may appoint a curator without giving notice.~~

~~(3) On special order of the court, the curator may be authorized to perform any duty or function of a personal representative.~~

~~(2)(4) Bond shall be required of the curator as the court deems necessary to secure the property. No bond shall be required of banks and trust companies as curators.~~

~~(5) The curator shall file an inventory of the property within 20 days. When the personal representative qualifies, the curator shall immediately account and deliver all assets of the estate in his or her hands to the personal representative within 20 days, and in default shall be subject to the provisions of this code relating to removal of personal representatives.~~

~~(3)(6) Curators shall be allowed reasonable compensation for their services and the court may consider the provisions of s. 733.617.~~

(4) Curators shall be subject to removal and surcharge.

Section 113. Section 733.502, Florida Statutes, is amended to read:

733.502 Resignation of personal representative.—A personal representative may resign and be relieved of his or her office. Notice of the petition shall be given to all interested persons. Before relieving the personal representative from his or her duties and obligations, the court shall require the personal representative to file a true and correct account of his or her administration and deliver to his or her successor or to his or her joint personal representative all of the property of the decedent and all records concerning the estate. After notice to all interested persons, the court may accept the resignation and then revoke the letters of the resigning personal representative if the interests of the estate are not jeopardized by the resignation. The acceptance of the resignation, ~~after compliance with this section,~~ shall not exonerate the any personal representative or the his or her surety from liability previously incurred.

Section 114. Section 733.503, Florida Statutes, is amended to read:

733.503 Appointment of successor upon resignation.—When the personal representative's resignation is accepted, the court shall appoint a

~~personal representative or shall appoint a curator to serve until a successor personal representative is appointed. If there is no joint personal representative, a successor must be appointed and qualified before a personal representative may be relieved of his or her duties and obligations as provided in s. 733.502.~~

Section 115. Section 733.5035, Florida Statutes, is created to read:

733.5035 Surrender of assets after resignation.—When the resignation has been accepted by the court, all estate assets, records, documents, papers, and other property of or concerning the estate in the resigning personal representative's possession or control shall immediately be surrendered to the successor fiduciary. The court may establish the conditions and specify the assets and records, if any, that the resigning personal representative may retain until the final accounting of the resigning personal representative has been approved.

Section 116. Section 733.5036, Florida Statutes, is created to read:

733.5036 Accounting and discharge following resignation.—

(1) A resigning personal representative shall file and serve a final accounting of the personal representative's administration.

(2) After determination and satisfaction of the liability, if any, of the resigning personal representative, after compensation of the personal representative and the attorney and other persons employed by the personal representative, and upon receipt of evidence that undistributed estate assets have been delivered to the successor fiduciary, the personal representative shall be discharged, the bond released, and the surety discharged.

Section 117. Section 733.504, Florida Statutes, is amended to read:

~~733.504 Causes of Removal of personal representative; causes for removal.—A personal representative may be removed and the his or her letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:~~

- (1) Adjudication of incompetency.
- (2) Physical or mental incapacity rendering the personal representative incapable of the discharge of his or her duties.
- (3) Failure to comply with any order of the court, unless the order has been superseded on appeal.
- (4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.
- (5) ~~The~~ Wasting or maladministration of the estate.
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.

(8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.

(9) ~~The Holding or acquiring by the personal representative of conflicting or adverse interests against the estate that will or may adversely interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.~~

(10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the ~~such~~ personal representative.

(11) Removal of domicile from Florida, if domicile was a requirement of initial appointment ~~the personal representative is no longer qualified under part III of this chapter.~~

(12) The personal representative would not now be entitled to appointment.

Section 118. Section 733.505, Florida Statutes, is amended to read:

733.505 Jurisdiction in removal proceedings.—A petition for removal shall be filed in the court having jurisdiction of the administration ~~issuing the letters.~~

Section 119. Section 733.506, Florida Statutes, is amended to read:

733.506 Proceedings for removal.—Proceedings for removal of a personal representative may be commenced by the court or upon the petition of an by any interested person or joint personal representative. The court shall revoke the letters of a removed personal representative. The removal of a personal representative shall not exonerate the removed personal representative or the removed personal representative's surety from any liability.

Section 120. Section 733.5061, Florida Statutes, is created to read:

733.5061 Appointment of successor upon removal.—When a personal representative is removed, the court shall appoint a personal representative or shall appoint a curator to serve until a successor personal representative is appointed.

Section 121. Section 733.507, Florida Statutes, is repealed:

~~733.507 Administration following resignation or removal.—When a personal representative has resigned or is removed and there is a remaining personal representative, no other personal representative shall be appointed unless the will otherwise requires. The remaining personal representative, together with any successor personal representative, if appointed, shall complete the administration of the estate. If the resigned or removed personal representative is a sole personal representative, the court shall appoint a successor personal representative as provided in s. 733.301.~~

Section 122. Section 733.508, Florida Statutes, is amended to read:

733.508 Accounting and discharge of removed personal representatives upon removal.—

(1) A removed personal representative shall file and serve a final accounting of that personal representative's administration.

(2) After determination and satisfaction of the liability, if any, of the removed personal representative, after compensation of that personal representative and the attorney and other persons employed by that personal representative, and upon receipt of evidence that the estate assets have been delivered to the successor fiduciary, the removed personal representative shall be discharged, the bond released, and the surety discharged. A removed personal representative shall file a full, true, and correct account of his or her administration within 30 days after removal.

Section 123. Section 733.509, Florida Statutes, is amended to read:

733.509 Surrender of assets upon removal.—Upon entry of an order removing a personal representative, the removed personal representative shall immediately deliver all estate assets, records, documents, papers, and other property of or concerning the estate in the removed personal representative's possession or control to the remaining personal representative or successor fiduciary. The removed personal representative shall deliver to the remaining or successor personal representative all of the property of the decedent and all records, documents, papers, and other property of or concerning the estate.

Section 124. Section 733.601, Florida Statutes, is amended to read:

733.601 Time of accrual of duties and powers.—The duties and powers of a personal representative commence upon his or her appointment. The powers of a personal representative relate back in time to give acts by the person appointed, occurring before appointment and beneficial to the estate, the same effect as those occurring after appointment thereafter. Before issuance of letters, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body and funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others when the acts would have been proper for a personal representative.

Section 125. Section 733.602, Florida Statutes, is amended to read:

733.602 General duties.—

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by s. 737.302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred upon him or her by this code, the authority in the will, if any, and the authority of any

~~order of the court in proceedings to which he or she is party, for the best interests of interested persons, including creditors as well as beneficiaries.~~

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning ~~the his or her~~ appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

Section 126. Section 733.603, Florida Statutes, is amended to read:

733.603 Personal representative to proceed without court order.—A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified by this code or ordered by the court, shall do so without adjudication, order, or direction of the court. A personal representative may invoke the jurisdiction of the court to resolve judicial questions concerning the estate or its administration.

Section 127. Section 733.604, Florida Statutes, is amended to read:

733.604 Inventory.—

(1)(a) ~~Unless an inventory has been previously filed Within 60 days after issuance of letters, a personal representative who is not a curator or a successor to another personal representative who has previously discharged the duty shall file a verified an inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death. Unless otherwise ordered by the court for good cause shown, the any such inventory or amended or supplementary inventory is subject to inspection only by the clerk of the court, or the clerk's representative, the personal representative, and the personal representative's attorney, and other interested persons.~~

~~(b) The initial opening of any safe-deposit box of the decedent must be conducted in the presence of an employee of the institution where the box is located and the personal representative. The inventory of the contents of the box also must be conducted in the presence of the employee and the personal representative, each of whom must verify the contents of the box by signing a copy of the inventory. The personal representative shall file the safe-deposit box inventory with the court within 10 days after the box is opened.~~

~~(2) The personal representative shall serve a copy of the inventory on the Department of Revenue, as provided in s. 199.062(4), the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it; and the~~

personal representative shall file proof of such service. The inventory shall be verified by the personal representative.

~~(2)(3) If the personal representative learns of any property not included in the original inventory, or learns that the estimated value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative he or she shall file a verified prepare an amended or supplementary inventory showing any the estimated value of the new items and their estimated value item at the date of the decedent's death, or the revised estimated value or description; and the personal representative shall serve a copy of the amended or supplementary inventory on each person on whom a copy of the inventory was served and shall file proof of such service. The amended or supplementary inventory shall be verified by the personal representative.~~

~~(3)(4) Upon written request to the personal representative, a beneficiary shall be furnished a written explanation of how the inventory value for an asset was determined, or, if an appraisal was obtained, a copy of the appraisal, as follows:~~

~~(a) To a residuary beneficiary or heir in an intestate estate, regarding all inventoried assets.~~

~~(b) To any other beneficiary, regarding all assets distributed or proposed to be distributed to that beneficiary. Upon the written request of a beneficiary for any asset specifically devised to that beneficiary, a beneficiary for any asset received by that beneficiary in satisfaction of a general devise, or a residuary beneficiary of a intestate estate or an heir of an intestate estate, for any asset not specifically devised, the personal representative shall promptly furnish a written explanation of how the inventory value for the asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. The personal representative must notify each beneficiary of that beneficiary's rights under this subsection the right to request information regarding determination of the inventory value of an asset. Neither a request nor the failure to request information under this subsection affects any rights of a beneficiary in subsequent proceedings concerning any accounting of the personal representative or the propriety of any action of the personal representative.~~

Section 128. Section 733.605, Florida Statutes, is repealed:

~~733.605—Appraisers.—The personal representative may employ a qualified and disinterested appraiser to assist him or her in ascertaining the fair market value of any asset at the date of the decedent's death or any other date that may be appropriate, the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate.~~

Section 129. Section 733.6065, Florida Statutes, is created to read:

733.6065 Opening safe-deposit box.—

(1) Subject to the provisions of s. 655.936(2), the initial opening of the decedent's safe-deposit box shall be conducted in the presence of any two of the following persons: an employee of the institution where the box is located, the personal representative, or the personal representative's attorney of record. Each person who is present must verify the contents of the box by signing a copy of the inventory under penalties of perjury. The personal representative shall file the safe-deposit box inventory, together with a copy of the box entry record from a date which is 6 months prior to the date of death to the date of inventory, with the court within 10 days after the box is opened. Unless otherwise ordered by the court, this inventory and the attached box entry record is subject to inspection only by persons entitled to inspect an inventory under s. 733.604(1). The personal representative may remove the contents of the box.

(2) The right to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, and to receive items as provided for in s. 655.935 are in addition to the rights provided for in subsection (1).

Section 130. Section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and. ~~He or she~~ may maintain an action to recover possession of property or to determine the title to it.

(2) If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate ~~and enforceable claims of the decedent's creditors~~, the personal representative is entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal representative certifies in writing to be required to satisfy the such insufficiency.

Section 131. Section 733.608, Florida Statutes, is amended to read:

733.608 General power of the personal representative.—

(1) All real and personal property of the decedent, except the protected homestead, within this state and the rents, income, issues, and profits from it shall be assets in the hands of the personal representative:

(a)(1) For the payment of devises, ~~debts~~, family allowance, elective share, estate and inheritance taxes, claims, charges, and expenses of the administration and obligations of the decedent's estate.

(b)(2) To enforce contribution and equalize advancement.

(c)(3) For distribution.

(2) If property that reasonably appears to the personal representative to be protected homestead is not in the possession of a person who appears to have an interest in the property, the personal representative is authorized, but not required, to take possession of that property for the limited purpose of preserving, insuring, and protecting it for the heir or devisee, pending a determination of its homestead status. If the personal representative takes possession of that property, any rents and revenues may be collected by the personal representative for the account of the heir or devisee, but the personal representative shall have no duty to rent or otherwise make the property productive.

Section 132. Section 733.609, Florida Statutes, is amended to read:

733.609 Improper exercise of power; breach of fiduciary duty.—A personal representative's fiduciary duty is the same as the fiduciary duty of a trustee of an express trust and a personal representative is liable to interested persons for damage or loss resulting from the breach of this duty. In all actions for breach of fiduciary duty or challenging the exercise of or failure to exercise a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees ~~If the exercise of power concerning the estate is improper or in bad faith, the personal representative is liable to interested persons for damage or loss resulting from a breach of his or her fiduciary duty to the same extent as a trustee of an express trust. In all actions challenging the proper exercise of a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.~~

Section 133. Section 733.610, Florida Statutes, is amended to read:

733.610 Sale, encumbrance or transaction involving conflict of interest.—Any sale or encumbrance to the personal representative or the personal representative's his or her spouse, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction that is affected by a conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

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

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

Section 134. Section 733.611, Florida Statutes, is amended to read:

733.611 Persons dealing with the personal representative; protection.—Except as provided in s. 733.613(1), a person who in good faith either assists or deals for value with a personal representative ~~or deals with him or her for value~~ is protected as if the personal representative acted properly ~~exercised his or her power~~. The fact that a person knowingly deals with the personal representative does not ~~alone~~ require the person to inquire into the authority of the personal representative ~~existence of his or her power, the limits on the power, or the propriety of its exercise~~. A person is not bound to see to the proper application of estate assets paid or delivered to the personal representative. ~~This~~ The protection here ~~expressed~~ extends to instances in which a procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is alive. This protection is in addition to any protection afforded by ~~The protection here expressed is not by substitution for that provided in~~ comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Section 135. Section 733.612, Florida Statutes, is amended to read:

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

(1) Retain assets owned by the decedent, pending distribution or liquidation, including those in which the personal representative is personally interested or that are otherwise improper for fiduciary trust investments.

(2) Perform or compromise, or, when proper, refuse to perform ~~performance of~~, the decedent's contracts. In performing the decedent's enforceable contracts ~~by the decedent~~ to convey or lease real property, among other possible courses of action, the personal representative may:

(a) Convey the real property for cash payment of all sums remaining due or for the purchaser's note for the sum remaining due, secured by a mortgage on the property land.

(b) Deliver a deed in escrow, with directions that the proceeds, when paid in accordance with the escrow agreement, be paid as provided ~~to the distributees of the decedent, as designated~~ in the escrow agreement.

(3) Receive assets from fiduciaries or other sources.

(4) Invest funds as provided in ss. 518.10-518.14, considering the amount to be invested, liquidity needs of the estate, and the time until distribution will be made ~~If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees.~~

(5) Acquire or dispose of an asset, excluding real property in this or another state, for cash or on credit and at public or private sale, and manage, develop, improve, exchange, partition, or change the character of an estate asset.

(6) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; or erect new party walls or buildings.

(7) Enter into a lease, as lessor or lessee, for a term within, or extending beyond, the period of administration, with or without an option to renew.

(8) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(9) Abandon property when it is valueless or so encumbered, or in a such condition, that it is of no benefit to the estate.

(10) Vote, or refrain from voting, stocks or other securities in person or by general or limited proxy.

(11) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities, unless barred by the provisions relating to claims.

(12) Hold property in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the property so held.

(13) Insure the assets of the estate against damage ~~or, loss, and liability~~ and insure against personal and fiduciary liability ~~himself or herself against liability~~ to third persons.

(14) Borrow money, with or without security, to be repaid from the estate assets or otherwise, other than real property, and advance money for the protection of the estate.

(15) Extend, renew, or in any manner modify any obligation owing to the estate. If the personal representative holds a mortgage, security interest, or other lien upon property of another person, he or she may accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by its lien instead of foreclosure.

(16) Pay taxes, assessments, and other expenses incident to the administration of the estate.

(17) Sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) Employ persons, including, but not limited to, attorneys, accountants, auditors, appraisers, investment advisers, and others, even if they are one and the same as the personal representative or are associated with the personal representative, to advise or assist the personal representative in the performance of ~~his or her~~ administrative duties; act upon the recommendations of ~~those such~~ employed persons without independent investigation; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. Any fees and compensation paid to a any ~~such~~ person who is the same as, associated with, or employed by, the personal representative shall be taken into consideration in determining the personal representative's compensation.

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative ~~in the performance of his or her duties~~.

(21) Sell, mortgage, or lease any personal property of the estate or any interest in it for cash, credit, or for part cash or part credit, and with or without security for the unpaid balance.

(22) Continue any unincorporated business or venture in which the decedent was engaged at the time of ~~his or her~~ death:

(a) In the same business form for a period of not more than 4 months from the date of ~~his or her~~ appointment, if continuation is a reasonable means of preserving the value of the business, including good will.

(b) In the same business form for any additional period of time that may be approved by court order ~~of court~~.

(23) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(24) Satisfy and settle claims and distribute the estate as provided in this code.

(25) Enter into agreements with the proper officer or department head, commissioner, or agent of any department of the government of the United States, waiving the statute of limitations concerning the assessment and collection of any federal tax or any deficiency in a federal tax.

(26) Make partial ~~part~~ distribution to the beneficiaries of any part of the estate not necessary to satisfy claims, expenses of administration, taxes, family allowance, exempt property, and an elective share, in accordance with the decedent's will or as authorized by operation of law.

(27) Execute any instruments necessary in the exercise of the personal representative's powers.

Section 136. Section 733.6121, Florida Statutes, is amended to read:

733.6121 Powers of personal representatives conferred by this part in relation to environmental or human health laws affecting property subject

to administration or to property subject to administration contaminated with hazardous or toxic substances; liability.—

(1) Except as otherwise provided by the will or by court order ~~of court~~, and subject to s. 733.805, the personal representative has, without court authorization, the powers specified in subsection (2).

(2) A personal representative has the power, acting reasonably and for the benefit of the interested persons ~~parties~~:

(a) To inspect or investigate, or cause to be inspected or investigated, property subject to administration, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such a business entity for the purpose of determining compliance with an environmental law affecting that property or to respond to an actual or threatened violation of an environmental law affecting that property;

(b) To take, on behalf of the estate, any action necessary to prevent, abate, or otherwise remedy an actual or potential violation of an environmental law affecting property subject to administration, either before or after initiation of an enforcement action by a governmental body;

(c) To settle or compromise at any time any claim against the estate or the personal representative that may be asserted by a governmental body or private party which involves the alleged violation of an environmental law affecting property subject to administration over which the personal representative has responsibility;

(d) To disclaim any power granted by any document, statute, or rule of law which, in the sole judgment of the personal representative, could cause the personal representative to incur personal liability, or the estate to incur liability, under any environmental law;

(e) To decline to serve as a personal representative, or having undertaken to serve ~~as a personal representative~~, to resign at any time, if the personal representative believes that there is or could be a conflict of interest ~~in his or her fiduciary capacity and in his or her individual capacity~~ because of potential claims or liabilities that could be asserted ~~against it~~ on behalf of the estate by reason of the type or condition of the assets held; or

(f) To charge against the assets of the estate the cost of any inspection, investigation, review, abatement, response, cleanup, or remedial action considered reasonable by the personal representative that this section authorizes the personal representative to take; and, in the event of the closing or termination of the estate or the transfer of the estate property to another personal representative, to hold moneys sufficient to cover the cost of cleaning up any known environmental problem.

(3) A personal representative is not personally liable to any beneficiary or any other party for a decrease in value of assets in an estate by reason of the personal representative's compliance or efforts to comply with an environmental law, specifically including any reporting requirement under that law.

(4) A personal representative who acquires ownership or control of a vessel or other property without having owned, operated, or materially participated in the management of that vessel or property before assuming ownership or control as personal representative is not considered an owner or operator for purposes of liability under chapter 376, chapter 403, or any other environmental law. A personal representative who willfully, knowingly, or recklessly causes or exacerbates a release or threatened release of a hazardous substance is personally liable for the cost of the response, to the extent that the release or threatened release is attributable to the personal representative's activities. This subsection does not preclude the filing of claims against the assets that constitute the estate held by the personal representative or the filing of actions against the personal representative as representative of the estate in his or her representative capacity. In any such an action, an award or judgment against the personal representative must be satisfied only from the assets of the estate.

(5) Neither the acceptance by the personal representative of the property or a failure by the personal representative to inspect or investigate the property creates any inference ~~of as to whether there is~~ liability under an environmental law with respect to that property.

(6) For the purposes of this section, the term "environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to protection of the environment or human health, and the term "hazardous substance" means a substance, material, or waste defined as hazardous or toxic, or any contaminant, pollutant, or constituent thereof, or otherwise regulated by an environmental law.

(7) This section applies to any estate admitted to probate on or after July 1, 1995.

Section 137. Section 733.613, Florida Statutes, is amended to read:

733.613 Personal representative's right to sell real property.—

(1) When a personal representative of an ~~a decedent dying~~ intestate estate, or whose testator has not conferred ~~upon him or her~~ a power of sale or whose testator has granted a power of sale but ~~the his or her~~ power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until ~~the sale is authorized or confirmed by the court~~ authorizes or confirms the sale. ~~Petition for authorization or confirmation of sale shall set forth the reasons for the sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the petition shall be given.~~ No bona fide purchaser shall be required to examine any proceedings before the order of sale.

(2) When a decedent's will confers specific power to sell or mortgage real property or a general power to sell any asset of the estate, the personal

representative may sell, mortgage, or lease, without authorization or confirmation of court, any real property of the estate or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances. The sale, mortgage, or lease need not be justified by a showing of necessity, and the sale pursuant to power of sale shall be valid.

(3) In a sale or mortgage which occurs under a specific power to sell or mortgage real property, or under a court order authorizing or confirming that act, the purchaser or lender takes title free of claims of creditors of the estate and entitlements of estate beneficiaries, except existing mortgages or other liens against real property are not affected.

Section 138. Section 733.614, Florida Statutes, is amended to read:

733.614 Powers and duties of successor personal representative.—A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but ~~he or she~~ shall not exercise any power made personal to the personal representative named in the will without court approval.

Section 139. Section 733.615, Florida Statutes, is amended to read:

733.615 Joint personal representatives; when joint action required.—

(1) If two or more persons are appointed joint personal representatives, and unless the will provides otherwise, the concurrence of all joint personal representatives appointed pursuant to a will or codicil executed prior to October 1, 1987, or appointed to administer an intestate estate of a decedent who died prior to October 1, 1987, or of a majority of joint personal representatives appointed pursuant to a will or codicil executed on or after October 1, 1987, or appointed to administer an ~~the~~ intestate estate of a decedent dying on or after October 1, 1987, is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any joint personal representative receives and receipts for property due the estate, when the concurrence required under this subsection cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a joint personal representative has been delegated to act for the others.

(2) Where action by a majority of the joint personal representatives appointed is authorized, a joint personal representative who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting joint personal representative is not liable for the consequences of an action ~~act~~ in which the dissenting personal representative ~~he or she~~ joins at the direction of the majority of the joint personal representatives, if the dissent is ~~he or she expressed his or her dissent in writing to the other any of his or her joint personal representatives at or before the time of the~~ action ~~joinder~~.

(3) A person dealing with a joint personal representative without actual knowledge that joint personal representatives have been appointed or if advised by a ~~the~~ joint personal representative ~~with whom he or she deals~~

that the joint personal representative has authority to act alone for any of the reasons mentioned in subsection (1) is as fully protected in dealing with that joint personal representative as if that joint personal representative possessed and properly exercised the power ~~he or she purports to exercise~~.

Section 140. Section 733.616, Florida Statutes, is amended to read:

733.616 Powers of surviving personal representatives.—Unless otherwise provided by the terms of the will or a court order otherwise provide, every power exercisable by joint personal representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, ~~and~~ If one or more, but not all, nominated as joint personal representatives are not appointed, those appointed may exercise all the powers granted to those nominated incident to the office.

Section 141. Section 733.617, Florida Statutes, is amended to read:

733.617 Compensation of personal representative.—

(1) A personal representative shall be entitled to a commission payable from the estate assets without court order as compensation for ordinary services. The commission shall be based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during administration ~~As compensation for its ordinary services, a personal representative shall be entitled, without order of court unless otherwise stated, to a commission payable from the estate assets. Such commission shall be based upon the probate estate's value as determined finally for probate inventory purposes and as accounted for by the personal representative, which value shall include all property, real or personal, tangible or intangible, and all income earned thereon.~~

(2) A commission computed on the compensable value of the estate is presumed to be reasonable compensation for a personal representative in formal administration ~~Upon the probate estate's value as defined in subsection (1), such commission shall be computed as follows:~~

(a) At the rate of 3 percent for the first \$1 million.

(b) At the rate of 2.5 percent for all above \$1 million and not exceeding \$5 million.

(c) At the rate of 2 percent for all above \$5 million and not exceeding \$10 million.

(d) At the rate of 1.5 percent for all above \$10 million.

(3) In addition to the previously described aforesaid ~~previously described~~ commission, a personal representative shall be allowed such further compensation as is the court may deem just and reasonable for any extraordinary services including, but not limited to:

(a) The sale of real or personal property.

- (b) The conduct of litigation on behalf of or against the estate.
- (c) Involvement in proceedings for the adjustment or payment of any taxes.
- (d) The carrying on of the decedent's business.
- (e) Dealing with protected homestead.
- (f)(e) Any other special services which may be necessary for the personal representative to perform.

(4) ~~If the a decedent's will provides that a personal representative's compensation shall be based upon specific criteria, other than a general reference to commissions allowed by law or words or similar import, including, but not limited to, rates, amounts, commissions, or reference to the personal representative's regularly published schedule of fees in effect at the decedent's date of death, or words of similar import, then a personal representative shall be entitled to compensation in accordance with that such provision. However, except for such references in the a decedent's will to the personal representative's regularly published schedule of fees in effect at the decedent's date of death, or words of similar import, if there is no written contract with the decedent regarding compensation, a personal representative may renounce the provisions contained in the will and be entitled to compensation under this section hereunder.~~ A personal representative may also renounce the its right to all or any part of the compensation.

(5) If the probate estate's compensable value ~~as defined in subsection (1)~~ is \$100,000 or more, and there are two representatives, each personal representative is entitled to the full commission allowed to a sole personal representative. If there are more than two personal representatives and the probate estate's compensable value is ~~more than \$100,000 or more,~~ the compensation to which two would be entitled must be apportioned among the personal representatives. The basis for ~~such~~ apportionment shall be one full commission allowed to the personal representative who has possession of and primary responsibility for administration of the assets and one full commission among the remaining personal representatives according to the services rendered by each of them respectively. If the probate estate's compensable value is less than \$100,000 and there is more than one personal representative, then one full commission ~~allowed herein to a sole personal representative~~ must be apportioned among the personal representatives according to the services rendered by each of them respectively.

(6) If the personal representative is a member of The Florida Bar and has rendered legal services in connection with the administration of the estate, then in addition to a fee as personal representative, there also shall be allowed a fee for the legal services rendered.

(7) Upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the personal representative or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors,

~~giving weight to each as it determines to be appropriate. The compensation for a personal representative as set forth in subsections (2) and (3) may, upon petition of any interested person, be increased or decreased by the court. In determining whether to increase or decrease the compensation for ordinary services, the court must consider each of the following factors, giving each such weight as it determines to be appropriate:~~

- (a) The promptness, efficiency, and skill with which the administration was handled by the personal representative;
- (b) The responsibilities assumed by and the potential liabilities of the personal representative;
- (c) The nature and value of the assets that are affected by the decedent's death;
- (d) The benefits or detriments resulting to the estate or interested persons ~~its beneficiaries~~ from the personal representative's services;
- (e) The complexity or simplicity of the administration and the novelty ~~novelties~~ of the issues presented;
- (f) The personal representative's participation in tax planning for the estate and the estate's beneficiaries and in tax return preparation, review, or approval;
- (g) The nature of the probate, nonprobate, and exempt assets; the expenses of administration; the liabilities of the decedent; and the compensation paid to other professionals and fiduciaries;
- (h) Any delay in payment of the compensation after the services were furnished; and
- (i) Any other relevant factors.

Section 142. Section 733.6171, Florida Statutes, is amended to read:

733.6171 Compensation of attorney for the personal representative.—

(1) Attorneys for personal representatives shall be entitled to reasonable compensation ~~for their services~~ payable from the estate ~~assets of the estate~~ without court order.

(2) The attorney, the personal representative, and persons bearing the impact of the compensation may agree to compensation determined in a different manner than provided in this section. Compensation may also be determined in a different manner than provided in this section if the manner is disclosed to the parties bearing the impact of the compensation and if no objection is made as provided for in the Florida Probate Rules in the petition for discharge or final accounting and there is no objection filed pursuant to s. 733.901.

(3) ~~Compensation provided in the following schedule for ordinary services of attorneys in formal estate administration is presumed to be reasonable if based on the compensable upon the inventory value of the estate,~~

which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule is presumed to be reasonable compensation for attorneys in formal estate administration:

(a) One thousand five hundred dollars for estates having a value of \$40,000 or less.

(b) An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000.

(c) An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000.

(d) For estates having a value in excess of \$100,000, at the rate of 3 percent on the next \$900,000.

(e) At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million.

(f) At the rate of 2 percent for all above \$3 million and not exceeding \$5 million.

(g) At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million.

(h) At the rate of 1 percent for all above \$10 million.

(4) In addition to ~~the attorney's~~ fees for ordinary services, the attorney for the personal representative shall be allowed further reasonable compensation for any extraordinary service. What is an extraordinary service may vary depending on many factors, including the size of the estate. Extraordinary services may include, but are not limited to:

(a) Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceeding, apportionment of estate taxes, or any ~~other~~ adversarial proceeding or litigation by or against the estate.

(b) Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.

(d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.

(e) Preparation of the estate's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.

(f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.

(g) Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.

(h) Legal advice regarding claims for damage to the environment or related procedures.

(i) Legal advice regarding homestead status of real property or proceedings involving that status and services related to protected homestead.

(j) Involvement in fiduciary, employee, or attorney compensation disputes.

(k) Proceedings involving ancillary administration of assets not subject to administration in this state.

(5) Upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors, giving such weight to each as it determines ~~may determine~~ to be appropriate:

(a) The promptness, efficiency, and skill with which the administration was handled by the attorney.

(b) The responsibilities assumed by, and the potential liabilities of, the attorney.

(c) The nature and value of the assets that are affected by the decedent's death.

(d) The benefits or detriments resulting to the estate or interested persons ~~its beneficiaries~~ from the attorney's services.

(e) The complexity or simplicity of the administration and the novelty of issues presented.

(f) The attorney's participation in tax planning for the estate and the estate's beneficiaries and tax return preparation, ~~or~~ review, or ~~and~~ approval.

(g) The nature of the probate, nonprobate, and exempt assets, the expenses of administration, ~~the and~~ liabilities of the decedent, and the compensation paid to other professionals and fiduciaries.

(h) Any delay in payment of the compensation after the services were furnished.

(i) Any other relevant factors.

~~(6) The court may determine reasonable attorney's compensation without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, an expert witness fee may be awarded by the court and paid from the assets of the estate. The court may, in its discretion, direct from what part of the estate it shall be paid.~~

~~(6)(7) If a separate written agreement regarding compensation exists between the attorney and the decedent, the attorney shall furnish a copy to the personal representative prior to commencement of employment, and, if employed, shall promptly file and serve a copy on all interested persons. Neither a separate agreement nor a provision in the will suggesting or directing that the personal representative to retain a specific attorney will obligate the personal representative to employ the attorney or obligate the attorney to accept the representation, but if the attorney who is a party to the agreement or who drafted the will is employed, the compensation paid shall not exceed the compensation provided in the agreement or in the will.~~

~~(8) Court proceedings to determine compensation, if required, are a part of the estate administration process, and the costs, including fees for the personal representative's attorney, shall be determined by the court and paid from the assets of the estate unless the court finds the request for attorney's fees to be substantially unreasonable. The court shall direct from which part of the estate they shall be paid.~~

~~(9) The amount and manner of determining compensation for attorneys for personal representatives must be disclosed in the final accounting, unless the disclosure is waived in writing signed by the parties bearing the impact of the compensation and filed with the court. No such waiver shall be valid unless it contains language declaring that the waiving party has actual knowledge of the amount and manner of determining such compensation and, in addition, expressly acknowledging either one of the following two elements:~~

~~(a) That the waiving party has agreed to the amount and manner of determining such compensation and is waiving any objections to payment of such compensation; or~~

~~(b) That the waiving party has the right under subsection (5) to petition the court to decrease such compensation and is waiving that right.~~

The requirements of this subsection shall not apply if the full amount of such compensation has previously been determined by order of the court after

notice. A waiver of the final accounting shall not be effective if it does not meet the requirements of this subsection.

~~(10) This section shall apply to estates in which an order of discharge has not been entered prior to its effective date but not to those estates in which attorney's fees have previously been determined by order of court after notice.~~

Section 143. Section 733.6175, Florida Statutes, is amended to read:

733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.—

(1) The court may review the propriety of the employment of any person employed by the personal representative and the reasonableness of any compensation paid to that person or to the personal representative.

(2) Court proceedings to determine reasonable compensation of the personal representative or any person employed by the personal representative, if required, are a part of the estate administration process, and the costs, including attorneys' fees, of the person assuming the burden of proof of propriety of the employment and reasonableness of the compensation shall be determined by the court and paid from the assets of the estate unless the court finds the requested compensation to be substantially unreasonable. The court shall direct from which part of the estate the compensation shall be paid.

~~(3) After notice to all affected interested persons and upon petition of an interested person bearing all or part of the impact of the payment of compensation to the personal representative or any person employed by him or her, the propriety of such employment and the reasonableness of such compensation or payment may be reviewed by the court. The burden of proof of propriety of the such employment and the reasonableness of the compensation shall be upon the personal representative and the person employed by him or her. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.~~

(4) The court may determine reasonable compensation for the personal representative or any person employed by the personal representative without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the estate. The court shall direct from what part of the estate the fee shall be paid.

Section 144. Section 733.619, Florida Statutes, is amended to read:

733.619 Individual liability of personal representative.—

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee, properly entered into ~~as in his or her fiduciary capacity in the administra-~~

tion of the estate unless the personal representative fails to reveal that his or her representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if ~~he or she~~ is personally at fault.

(3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative as a fiduciary in his or her fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in that his or her fiduciary capacity, whether or not the personal representative is individually liable ~~therefor~~.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

Section 145. Section 733.701, Florida Statutes, is amended to read:

733.701 Notifying creditors.—~~Unless creditors' claims are otherwise barred by s. 733.710 the proceedings are under chapter 734 or chapter 735,~~ every personal representative shall cause notice to creditors of administration to be published and served under s. ~~733.2121~~ 733.212.

Section 146. Section 733.702, Florida Statutes, is amended to read:

733.702 Limitations on presentation of claims.—

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, ~~even if the claims are unmaturred, contingent, whether due or not, direct or contingent, or liquidated or unliquidated;~~ no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding within the later of 3 months after the time of the first publication of the notice to creditors of administration or, as to any creditor required to be served with a copy of the notice to creditors of administration, 30 days after the date of service of ~~such copy of the notice~~ 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. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the interested persons beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or, within 3 months after ~~the first publication of the notice of administration, he or she may file a proof of claim of all claims he or she has paid or intends to pay.~~

(2) No cause of action ~~heretofore or hereafter~~ accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission,

shall survive the death of the person against whom the claim may be made, whether ~~or not~~ an action is pending at the death of the person ~~or not~~, unless ~~a~~ the claim is filed within the time periods set forth in this part.

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed ~~on the grounds of timeliness or otherwise~~ unless the court extends the time in which the claim may be filed. ~~Such~~ An extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless ~~such~~ an extension has been granted by the court. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension ~~or be forever barred~~, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

(4) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability that of the decedent or the personal representative for which he or she is protected by the casualty insurance.

~~(c) The filing of a claim by the Department of Revenue subsequent to the expiration of the time for filing claims provided in subsection (1), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.~~

~~(c)(d)~~ The filing of a cross-claim or counterclaim against the estate in an action instituted by the estate; however, no recovery on ~~such~~ a cross-claim or counterclaim shall exceed the estate's recovery in that such an action.

(5) The Department of Revenue may file a claim against the estate of a decedent for taxes due under chapter 199 after the expiration of the time for filing claims provided in subsection (1), if the department files its claim within 30 days after the service of the inventory. Upon filing of the estate tax return with the department as provided in s. 198.13, or to the extent the inventory or estate tax return is amended or supplemented, the department has the right to file a claim or to amend its previously filed claim within 30 days after service of the estate tax return, or an amended or supplemented inventory or filing of an amended or supplemental estate tax return, as to the additional information disclosed.

~~(6)(5)~~ Nothing in this section shall extend the limitations period set forth in s. 733.710.

Section 147. Subsection (2) of section 733.703, Florida Statutes, is amended to read:

733.703 Form and manner of presenting claim.—

(2) Within the time allowed by s. 733.702, the personal representative may file a proof of claim of all claims he or she has paid or intends to pay. A claimant whose claim is listed in a personal representative's proof of claim filed within 3 months after the first publication of the notice of administration shall be deemed to have filed a statement of the claim listed. Except as provided otherwise in this part, the claim shall be treated for all other purposes as if it had been filed by the claimant had filed it.

Section 148. Section 733.704, Florida Statutes, is amended to read:

733.704 Amendment of claims.—If a bona fide attempt to file a claim is made by a creditor but the claim is defective as to form, the court may permit the amendment of the claim at any time.

Section 149. Section 733.705, Florida Statutes, is amended to read:

733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice to creditors of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of those such claims pursuant to subsections (4), (5), (6), and (7), and (8). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 months from the first publication of notice to creditors of administration. If any person brings an action against a personal representative within the 5 months on any claim to which the personal representative has not filed an ~~no~~ objection, the plaintiff shall not receive any costs or attorneys' fees if he or she prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice to creditors of administration or within 30 days from the timely filing or amendment of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. ~~An objection to a claim shall contain a statement that the claimant is limited to a period of 30 days from the date of service of the objection within which to bring an action on the claim as provided in subsection (4). The failure to include such a statement in the objection shall not affect the validity of the objection but may be considered as good cause for extending the time for filing an action or proceeding after the objection is filed. If an objection is filed, the person filing it shall serve a copy of the objection as provided by the Florida Probate Rules by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing or serving an objection to any claim~~

or may extend the time for serving the objection. The extension of time shall be granted only after notice. Objection to a claim constitutes an objection to an amendment of that claim unless the objection is withdrawn.

(3) If the objection is filed by a person other than the personal representative, the personal representative may apply to the court for an order relieving him or her from the obligation to defend the estate in an independent action or for the appointment of the objector as administrator ad litem to defend the action. Fees for the attorney for the administrator ad litem may be awarded as provided in s. 733.106(3). If costs or attorney's fees are awarded from or against the estate, the probate court may charge or apportion that award as provided in s. 733.106(4).

(4)(3) An objection by an interested person to a personal representative's proof of claim shall state the particular item or items to which the interested person objects and shall be filed and served as provided in subsection (2). Issues of liability as between the estate and the personal representative individually for items paid by the personal representative and thereafter listed in a personal representative's proof of claim shall be determined in the estate administration proceeding, in a proceeding for accounting or, surcharge, or in another other appropriate proceeding, whether or not an objection has been filed. If an objection to an item listed as to be paid in a personal representative's proof of claim is filed and served, and the personal representative has not paid the item, the other subsections of this section shall apply as if a claim for the item had been filed by the claimant; but if the personal representative has paid the claim after listing it as to be paid, issues of liability as between the estate and the personal representative individually shall be determined in the manner provided for an item listed as paid.

(5)(4) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the personal representative in writing before it expires. For good cause, the court may extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding on the claim may shall be brought against the personal representative after the time limited above, and the any such claim is thereafter forever barred without any court order. If an objection is filed to the claim of any creditor and an action is brought by the creditor brings an action to establish the his or her claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(6)(5) A claimant may bring an independent action or declaratory action upon a claim which was not timely filed pursuant to s. 733.702(1) only if the claimant has been granted an extension of time to file the claim pursuant to s. 733.702(3).

(7)(6) If an unmatured claim has not become due before the time for distribution of an estate, the personal representative may prepay the full amount of principal plus accrued interest due on the claim, without discount and without penalty, regardless of any prohibition against prepayment or provision for penalty in any instrument on which the claim is founded. If the claim is not prepaid, no order of discharge may be entered until the creditor and personal representative have filed an agreement disposing of the claim, or in the absence of an agreement until the court provides for payment by one of the following methods:

(a) Requiring the personal representative to reserve such assets as the court determines to be adequate to pay the claim when it becomes due; in fixing the amount to be reserved, the court may determine the value of any security or collateral to which the creditor may resort for payment of the claim and may direct the reservation, if necessary, of sufficient assets to pay the claim or to pay the difference between the value of any security or collateral and the amount necessary to pay the claim. If the estate is insolvent, the court may direct a proportionate amount to be reserved. The court shall direct that the amount reserved be retained by the personal representative until the time that the claim becomes due, and that so much of the reserved amount as is not used for payment be distributed ~~thereafter~~ according to law;

(b) Requiring that the claim be adequately secured by a mortgage, pledge, bond, trust, guaranty, or other security, as may be determined by the court, the security to remain in effect until the time ~~that~~ the claim becomes due, and ~~that~~ so much of the security or collateral as is not needed for payment be distributed ~~thereafter~~ according to law; or

(c) Making ~~provisions such other provision~~ for the disposition or satisfaction of the claim as are equitable, and in a manner so as not to delay unreasonably the closing of the estate.

(8)(7) If no cause of action has accrued on a contingent claim before the time for distribution of an estate, no order of discharge may be entered until the creditor and the personal representative have filed an agreement disposing of the claim or, in the absence of an such agreement, until:

(a) The court determines that the claim is adequately secured or that it has no value,

(b) Three months from the date on which a cause of action accrues upon the claim, provided that no action on the claim is then pending,

(c) Five years from the date of first publication of notice to creditors of administration, or

(d) The court provides for payment of the claim upon the happening of the contingency by one of the methods described in paragraph (a), paragraph (b), or paragraph (c) of subsection (7) (6),

whichever occurs first. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the

~~claim is barred without court order. If an objection is filed to the claim of any creditor and the creditor brings an action to establish the claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs. No action or proceeding may be brought against the personal representative on the claim after the time limited above, and any such claim shall thereafter be forever barred without order of court. If an action is brought within the time limited above, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.~~

~~(9)(8) No interest shall be paid by the personal representative or allowed by the court on a claim until the expiration of 5 calendar months from the first publication of the notice of administration, unless the claim is founded on a written obligation of the decedent providing for the payment of interest. Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, interest shall be allowed and paid beginning 5 months from the first publication of the notice to creditors of administration.~~

~~(10)(9) The court may determine all issues concerning claims or matters not requiring trial by jury.~~

~~(11)(10) An order for extension of time authorized under this section may be entered only in the estate administration proceeding.~~

Section 150. Section 733.707, Florida Statutes, is amended to read:

733.707 Order of payment of expenses and obligations.—

(1) The personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order:

(a) Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys attorneys' fees and attorneys fees awarded under s. 733.106(3).

(b) Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian under s. 744.441(16), the personal representative, or any other person, not to exceed the aggregate of \$6,000.

(c) Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.

(d) Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent ~~him or her~~.

(e) Class 5.—Family allowance.

(f) Class 6.—Arrearage from court-ordered child support.

(g) Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.

(h) Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate ~~and enforceable claims of the decedent's creditors~~ to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(2).

(a) For purposes of this subsection, any trusts established as part of, and all payments from, either an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an Individual Retirement Account, as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan established by a corporation which is qualified under s. 401 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(b) For purposes of this subsection, any trust described in s. 664 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(c) This subsection shall not impair any rights an individual has under a qualified domestic relations order as that term is defined in s. 414(p) of the Internal Revenue Code of 1986, as amended.

(d) For purposes of this subsection, property held or received by a trust to the extent that the property would not have been subject to claims against the decedent's estate if it had been paid directly to a trust created under the decedent's will or other than to the decedent's estate, or assets received from any trust other than a trust described in this subsection, shall not be deemed assets of the trust available ~~to for the payment of the expenses of administration of and enforceable claims against~~ the decedent's estate.

(e) For purposes of this subsection, a "right of revocation" is a power retained by the decedent, held in any capacity, to:

1. Amend or revoke the trust and revest the principal of the trust in the decedent; or
2. Withdraw or appoint the principal of the trust to or for the decedent's benefit.

Section 151. Section 733.708, Florida Statutes, is amended to read:

733.708 Compromise.—When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to

compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the interested persons ~~beneficiaries~~. The order shall relieve the personal representative of liability or responsibility for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. ~~Notice must be given to those who have filed objection to the claim proposed to be compromised.~~

Section 152. Subsection (1) of section 733.710, Florida Statutes, is amended to read:

733.710 Limitations on claims against estates.—

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative, (if any), nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

Section 153. Section 733.801, Florida Statutes, is amended to read:

733.801 Delivery of devises and distributive shares.—

(1) No personal representative shall be required to pay or deliver any devise or distributive share or to surrender possession of any land to any beneficiary until the expiration of 5 months from the granting of letters.

(2) Except as otherwise provided in the will, the personal representative shall pay as an expense of administration the reasonable expenses of storage, insurance, packing, and delivery of tangible personal property to a beneficiary.

Section 154. Subsections (1) and (2) of section 733.802, Florida Statutes, are amended to read:

733.802 Proceedings for compulsory payment of devises or distributive interest.—

(1) Before final distribution, no personal representative shall be compelled:

(a) To pay a devise in money before the final settlement of the personal representative's ~~his or her~~ accounts,

(b) To deliver specific personal property devised ~~that may have come into his or her hands~~, unless the personal property is exempt personal property,

(c) To pay all or any part of a distributive share in the personal estate of a decedent, or

(d) To surrender land to any beneficiary,

unless the beneficiary establishes ~~files a petition setting forth the facts that entitle him or her to relief and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, elective share of the surviving spouse, charges, or expenses of administration or to provide for providing funds for contribution or to enforce enforcing equalization in case of advancements.~~

(2) An order directing the surrender of real property or the delivery of personal property by the personal representative to the beneficiary shall describe the property to be surrendered or delivered. ~~The order shall be conclusive in favor of bona fide purchasers for value from the beneficiary or distributee as against the personal representative and all other persons claiming by, through, under, or against the decedent or the decedent's estate.~~

Section 155. Section 733.803, Florida Statutes, is amended to read:

733.803 Encumbered property; liability for payment.—The specific devisee of any encumbered property shall be entitled to have the encumbrance on devised property paid at the expense of the residue of the estate only when the will shows that such an intent. ~~A general direction in the will to pay debts does not show that such an intent.~~

Section 156. Section 733.805, Florida Statutes, is amended to read:

733.805 Order in which assets abate ~~are appropriated.~~—

(1) ~~If a testator makes provision by his or her will, or designates the Funds or property designated by the will shall to be used, to pay for the payment of debts, estate and inheritance taxes, family allowance, exempt property, elective share charges, expenses of administration, and devises, to the extent the funds or property are they shall be paid out of the funds or from the property or proceeds as provided by the will so far as sufficient. If no provision is made or the designated any fund or property designated, or if it is insufficient, the funds and property of the estate shall be used for these such purposes, except as otherwise provided in s. 733.817 with respect to estate, inheritance, and other death taxes, and to raise the shares of a pretermitted spouse and children, except as otherwise provided in subsections (3) and (4), in the following order:~~

- (a) ~~Property passing by intestacy not disposed of by the will.~~
- (b) Property devised to the residuary devisee or devisees.
- (c) Property not specifically or demonstratively devised.
- (d) Property specifically or demonstratively devised.

(2) Demonstrative devises shall be classed as general devises upon the failure or insufficiency of funds or property out of which payment should be made, to the extent of the insufficiency. Devises to the decedent's surviving spouse, given in satisfaction of, or instead of, the surviving spouse's statutory rights in the estate, shall not abate until other devises of the same class

are exhausted. Devises given for a valuable consideration shall abate with other devises of the same class only to the extent of the excess over the amount of value of the consideration until all others of the same class are exhausted. Except as herein provided, devises shall abate equally and ratably and without preference or priority as between real and personal property. When property that has been specifically devised or charged with a devise is sold or used ~~taken~~ by the personal representative, other devisees shall contribute according to their respective interests to the devisee whose devise has been sold or used ~~taken,~~ ~~and before distribution the court shall determine~~ The amounts of the respective contributions shall be determined by the court, and they shall be paid or withheld before distribution is made.

(3) Section 733.817 shall be applied before this section is applied.

(4) In determining the contribution required under s. 733.607(2), subsections (1)-(3) of this section and s. 737.3054(2) shall be applied as if the beneficiaries of the estate and the beneficiaries of a trust described in s. 733.707(3), other than the estate or trust itself, were taking under a common instrument.

Section 157. Section 733.806, Florida Statutes, is amended to read:

~~733.806 Advancement.—If a person dies intestate as to all his or her estate, property that the decedent gave during in his or her lifetime to an heir is treated as an advancement against the heir's latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir. The property advanced shall be valued at the time the heir came into possession or enjoyment of the property or at the time of the death of the decedent, whichever first occurs. If the recipient of the property does not survive the decedent, the property shall not be taken into account in computing the intestate share to be received by the recipient's descendants unless the declaration or acknowledgment provides otherwise.~~

Section 158. Subsections (3), (4), (5), and (6) of section 733.808, Florida Statutes, are amended to read:

~~733.808 Death benefits; disposition of proceeds.—~~

~~(3) In the event no trustee makes proper claim to the proceeds from the insurance company or other obligor within a period of 6 months after the date of the death of the insured, employee, or annuitant, or if satisfactory evidence is furnished to the insurance company or such obligor within that period that there is, or will be, no trustee to receive the proceeds, payment shall be made by the insurance company or obligor to the personal representative of the person making the such designation, unless otherwise provided by agreement with the insurer or other obligor during the lifetime of the insured, employee, or annuitant.~~

~~(4) Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate~~

~~of the testator or an intestate estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) transfer or estate taxes, debts, or other charges enforceable against the estate to any greater extent than if the such proceeds were payable directly to the beneficiaries named in the trust.~~

(5) The death benefits so held in trust may be commingled with any other assets that may properly come into the trust.

(6) Nothing in this section shall affect the validity of any designation of a beneficiary of proceeds previously ~~heretofore~~ made that designates as beneficiary the trustee of any trust established under a trust agreement or declaration of trust or by will.

Section 159. Section 733.809, Florida Statutes, is amended to read:

733.809 Right of retainer.—The amount of a noncontingent indebtedness ~~due from~~ of a beneficiary to the estate, ~~if due~~, or its present value, if not due, may be offset against ~~that~~ the beneficiary's interest. ~~However, that, but the~~ beneficiary shall have ~~has~~ the benefit of any defense that would be available ~~to him or her~~ in a direct proceeding for recovery of the debt.

Section 160. Section 733.810, Florida Statutes, is amended to read:

733.810 Distribution in kind; valuation.—

(1) Assets shall be distributed in kind unless:

(a) A general power of sale is conferred;

(b) A contrary intention is indicated by the will or trust; or

(c) Disposition is made otherwise under the provisions of this code. Unless a general power of sale is conferred or a contrary intention is indicated by the will or unless assets are otherwise disposed of under the provisions of this code, the distributable assets of a decedent's estate shall be distributed in kind through application of the following provisions:

(2)(a) Any pecuniary devise, family allowance, or other pecuniary share of the estate or trust or devise payable in money may be satisfied by value in kind if:

(a)1. The person entitled to the payment has not demanded cash;

(b)2. The property is distributed ~~in kind~~ is valued at fair market value ~~as of the date of its distribution date~~; and

(c)3. No residuary devisee has requested that the asset remain a part of the residuary residue ~~of the estate~~.

(3)(b) When it is not practicable to distribute undivided interests in a residuary asset property, the asset may property shall be sold ~~converted into cash for distribution~~.

~~(4)(2)~~ When the ~~personal representative, trustee, or other~~ fiduciary under a will or trust instrument is required to, or has an option, to, satisfy a pecuniary devise or transfer in trust, to, or for the benefit of, the surviving spouse, with an in-kind distribution ~~assets of the estate or trust in kind~~, at values as finally determined for federal estate tax purposes, the ~~personal representative, trustee, or other~~ fiduciary shall, unless the governing will or trust instrument otherwise provides, satisfy the devise or transfer in trust by distribution of assets, including cash, fairly representative of the appreciated or depreciated value of all property available for that distribution in satisfaction of the devise or transfer in trust, taking into consideration any gains and losses realized from a prior the sale, ~~prior to distribution of the marital interest~~, of any property not devised specifically, generally, or demonstratively devised.

~~(5)(3)~~ ~~With the consent of all beneficiaries affected~~, A personal representative or a trustee is authorized to distribute any distributable assets, non-pro rata among the beneficiaries subject to the fiduciary's duty of impartiality entitled thereto.

Section 161. Section 733.811, Florida Statutes, is amended to read:

733.811 Distribution; right or title of distributee.—If a distributee receives from a fiduciary an instrument transferring assets in kind, payment in distribution, or possession of specific property, the distributee has succeeded to the estate's interest in the assets as against all persons interested in the estate. However, the fiduciary may recover the assets or their value if the distribution was improper Proof that a distributee has received an instrument transferring assets in kind or payment in distribution or possession of specific property from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, but the personal representative may recover the assets or their value if the distribution was improper.

Section 162. Section 733.812, Florida Statutes, is amended to read:

733.812 Improper distribution or payment; liability of distributee or payee.—Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitations, A distributee of property improperly distributed or paid or a claimant who was paid improperly must paid, if he or she has the property, is liable to return the assets or funds property improperly received, and the income from those assets or interest on the funds its income since distribution or payment, unless the distribution or payment cannot be questioned because of adjudication, estoppel, or limitations to the personal representative or to the beneficiaries entitled to it. If the distributee or claimant he or she does not have the property, its then he or she is liable to return the value of the property improperly received at the date of disposition, and its income thereon, and gain received by the distributee or claimant must be returned him or her.

Section 163. Section 733.813, Florida Statutes, is amended to read:

733.813 Purchasers from distributees protected.—If property distributed in kind, or a security interest ~~in that property therein~~, is acquired by a purchaser or lender for value from a distributee ~~who has received an instrument of distribution or possession from the personal representative~~, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. ~~The To be protected under this provision~~ a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

Section 164. Section 733.814, Florida Statutes, is amended to read:

733.814 Partition for purpose of distribution.—When two or more ~~beneficiaries heirs or devisees~~ are entitled to distribution of undivided interests in any property, the personal representative or any beneficiary one or more of the beneficiaries may petition the court before ~~closing the estate is closed to make partition. After formal notice to the interested beneficiaries, the court shall partition the property in the same manner as provided by law for civil actions of partition.~~ The court may direct the personal representative to sell any property that cannot be partitioned without prejudice to the owners and that cannot be allotted equitably and conveniently be allotted to any one party.

Section 165. Section 733.815, Florida Statutes, is amended to read:

733.815 Private ~~contracts agreements~~ among interested persons distributees.—Subject to the rights of creditors and taxing authorities, ~~competent interested persons~~ may agree among themselves to alter the interests, shares, or amounts to which they are entitled ~~under the will or under the laws of intestacy in a written contract executed by them all who are affected.~~ The personal representative shall abide by the terms of the contract agreement, subject to the personal representative's his or her obligation to administer the estate for the benefit of interested persons who are not parties to the contract, and creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his or her office for the benefit of any beneficiaries of the decedent who are not parties to the agreement. Personal representatives are not required to see to the performance of trusts if the trustee is another person who is willing to accept the trust. Trustees of a testamentary trust are interested persons beneficiaries for the purposes of this section. Nothing in this section herein relieves trustees of any duties owed to beneficiaries of trusts.

Section 166. Section 733.816, Florida Statutes, is amended to read:

733.816 Disposition of unclaimed property held by personal representatives.—

(1) In all cases in which there is unclaimed property in the hands of a personal representative that cannot be distributed or paid ~~because of the inability to find the lawful owner because of inability to find him or her or because no lawful owner is known or because the lawful owner refuses to accept the property after a reasonable attempt to distribute it and after notice to that lawful owner~~, the court shall order the personal representative

to sell the property and deposit the proceeds and cash already in hand, after retaining those amounts provided for in subsection (4), with the clerk and receive a receipt, and the clerk shall deposit the funds in the registry of the court to be disposed of as follows:

(a) If the value of the funds is \$500 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of the personal representative, and the other pertinent information that will put interested persons on notice.

(b) If the value of the funds is over \$500, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the State Treasurer after deducting the clerk's ~~his or her~~ fees and the costs of publication.

(2) Upon receipt of the funds, the State Treasurer shall deposit them to the credit of the State School Fund, to become a part of the school fund. All interest and all income that may accrue from the money while so deposited shall belong to the fund. The funds so deposited shall constitute and be a permanent appropriation for payments by the State Treasurer in obedience to court orders entered as provided by subsection (3).

(3) Within 10 years from the date of deposit with the State Treasurer, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of entitlement ~~his or her right to them~~, any person entitled to the funds before or after payment to the State Treasurer and deposit as provided by subsection (1) may obtain a court ~~an order of court~~ directing the payment of the funds to that person ~~him or her~~. All funds deposited with the State Treasurer and not claimed within 10 years from the date of deposit shall escheat to the state for the benefit of the State School Fund.

(4) The personal representative depositing assets with the clerk is permitted to retain from the funds ~~in his or her possession~~ a sufficient amount to pay final costs of administration chargeable to the assets, including fees allowed pursuant to s. 733.617 accruing between the deposit of the funds with the clerk of the court and the order of discharge. Any funds so retained which are surplus shall be deposited with the clerk prior to discharge of the personal representative.

(5)(a) If a person entitled to the funds assigns the right ~~his or her rights~~ to receive payment or part payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with that ~~such~~ person, the Department of Banking and Finance is authorized to make distribution in accordance with the ~~such~~ assignment.

(b) Payments made to an attorney or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly

maintained by the attorney or private investigative agency in a financial institution located in this state and authorized to accept these ~~such~~ deposits ~~and located in this state.~~

(c) Distribution by the attorney or private investigative agency to the person entitled to the funds shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests the distribution in writing ~~such distribution~~ before it is made.

(d) The department shall not be civilly or criminally liable for any funds distributed pursuant to this subsection, provided the ~~such~~ distribution is made in good faith.

Section 167. Subsections (1) and (2), paragraph (a) of subsection (4), paragraph (c) of subsection (5), subsection (6), paragraph (a) of subsection (7), and subsection (11) of section 733.817, Florida Statutes, are amended to read:

733.817 Apportionment of estate taxes.—

(1) For purposes of this section:

(a) “Fiduciary” means a person other than the personal representative in possession of property included in the measure of the tax who is liable to the applicable taxing authority for payment of the entire tax to the extent of the value of the property in ~~his or her~~ possession.

(b) “Governing instrument” means a will, trust agreement, or any other document that controls the transfer of an asset on the occurrence of the event with respect to which the tax is being levied.

(c) “Gross estate” means the gross estate, as determined by the Internal Revenue Code with respect to the federal estate tax and the Florida estate tax, and as that ~~such~~ concept is otherwise determined by the estate, inheritance, or death tax laws of the particular state, country, or political subdivision whose tax is being apportioned.

(d) “Included in the measure of the tax” means that for each separate tax that an interest may incur, only interests included in the measure of that particular tax are considered. The term “included in the measure of the tax” does not include any interest, whether passing under the will or not, to the extent the interest is initially deductible from the gross estate, without regard to any subsequent reduction ~~diminution~~ of the deduction by reason of the charge of any part of the applicable tax to the interest. The term “included in the measure of the tax” does not include interests or amounts that are not included in the gross estate but are included in the amount upon which the applicable tax is computed, such as adjusted taxable gifts with respect to the federal estate tax. If an election is required for deductibility, an interest is not “initially deductible” unless the election for deductibility is allowed.

(e) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time.

(f) “Net tax” means the net tax payable to the particular state, country, or political subdivision whose tax is being apportioned, after taking into account all credits against the applicable tax except as provided in this section. With respect to the federal estate tax, “net tax” is determined after taking into account all credits against the tax except for the credit for foreign death taxes.

(g) “Nonresiduary devise” means any devise that is not a residuary devise.

(h) “Nonresiduary interest” in connection with a trust means any interest in a trust which is not a residuary interest.

(i) “Recipient” means, with respect to property or an interest in property included in the gross estate, an heir at law in an intestate estate, devisee in a testate estate, beneficiary of a trust, beneficiary of an insurance policy, annuity, or other contractual right, surviving tenant, taker as a result of the exercise or in default of the exercise of a general power of appointment, person who receives or is to receive the property or an interest in the property, or person in possession of the property, other than a creditor.

(j) “Residuary devise” has the meaning set forth in s. 731.201(31)(30).

(k) “Residuary interest,” in connection with a trust, means an interest in the assets of a trust which remain after provision for any distribution that is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount.

(l) “Revocable trust” means a trust as described in s. 733.707(3) as defined in s. 731.201(33) created by the decedent to the extent that the decedent had at his or her death the power to alter, amend, or revoke the trust either alone or in conjunction with any other person.

(m) “State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(n) “Tax” means any estate tax, inheritance tax, generation skipping transfer tax, or other tax levied or assessed under the laws of this or any other state, the United States, any other country, or any political subdivision of the foregoing, as finally determined, which is imposed as a result of the death of the decedent, including, without limitation, the tax assessed pursuant to s. 4980A of the Internal Revenue Code. The term also includes any interest and penalties imposed in addition to the tax. Unless the context indicates otherwise, the term “tax” means each separate tax.

(o) “Temporary interest” means an interest in income or an estate for a specific period of time or for life or for some other period controlled by reference to extrinsic events, whether or not in trust.

(p) “Tentative Florida tax” with respect to any property means the net Florida estate tax that would have been attributable to that property if no tax were payable to any other state in respect of that property.

(q) "Value" means the pecuniary worth of the interest involved as finally determined for purposes of the applicable tax after deducting any debt, expense, or other deduction chargeable to it for which a deduction was allowed in determining the amount of the applicable tax. A lien or other encumbrance is not regarded as chargeable to a particular interest to the extent that it will be paid from other interests. The value of an interest shall not be reduced by reason of the charge against it of any part of the tax.

(2) An interest in protected homestead property shall be exempt from the apportionment of taxes if such interest passes to a person to whom inures the decedent's exemption from forced sale under the State Constitution.

(4)(a) Except as otherwise effectively directed by the governing instrument, if the Internal Revenue Code including, but not limited to, ss. 2032A(c)(5), 2206, 2207, 2207A, 2207B, and 2603, of the Internal Revenue Code applies to apportion federal tax against recipients of certain interests, all net taxes, including taxes levied by the state attributable to each type of interest, shall be apportioned against the recipients of all interests of that type in the proportion that the value of each interest of that type included in the measure of the tax bears to the total of all interests of that type included in the measure of the tax.

(5) Except as provided above or as otherwise directed by the governing instrument, the net tax attributable to each interest shall be apportioned as follows:

(c) The net tax attributable to an interest in protected homestead property which is exempt from apportionment pursuant to subsection (2) shall be apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order:

1. Class I: Recipients of interests not disposed of by the decedent's will or revocable trust that ~~which~~ are included in the measure of the federal estate tax.

2. Class II: Recipients of residuary devises and residuary interests that are included in the measure of the federal estate tax.

3. Class III: Recipients of nonresiduary devises and nonresiduary interests that are included in the measure of the federal estate tax. The net tax apportioned to a class, if any, pursuant to this paragraph shall be apportioned among the recipients in the class in the proportion that the value of the interest of each bears to the total value of all interests included in that class.

(6) The personal representative or fiduciary shall not be required to transfer to a recipient any property ~~in possession of the personal representative or fiduciary which he or she reasonably anticipated to anticipate~~ may be necessary for the payment of taxes. Further, the personal representative or fiduciary shall not be required to transfer any property ~~in possession of the personal representative or fiduciary~~ to the recipient until the amount of the tax due from the recipient is paid by the recipient. If property is transferred before final apportionment of the tax, the recipient shall provide a

bond or other security for his or her apportioned liability in the amount and form prescribed by the personal representative or fiduciary.

(7)(a) The personal representative may petition at any time for an order of apportionment. If no administration has been commenced at any time after 90 days from the decedent's death any fiduciary may petition for an order of apportionment in the court in which venue would be proper for administration of the decedent's estate. Formal notice of the petition for order of apportionment shall be given to all interested persons. At any time after 6 months from the decedent's death, any recipient may petition the such court for an order of apportionment.

(11) Nothing in this section shall limit the right of any person who has paid more than the amount of the tax apportionable to that such person, calculated as if all apportioned amounts would be collected, to obtain contribution from those who have not paid the full amount of the tax apportionable to them, calculated as if all apportioned amounts would be collected, and that right is hereby conferred. In any action to enforce contribution, the court shall award taxable costs as in chancery actions, including reasonable attorney's fees.

Section 168. Section 733.901, Florida Statutes, is amended to read:

733.901 ~~Distribution;~~ Final discharge.—

(1) ~~After administration has been completed the personal representative shall be discharged administration except for distribution, he or she shall file a final accounting and a petition for discharge that shall contain:~~ When a personal representative has completed the personal representative shall be discharged administration except for distribution, he or she shall file a final accounting and a petition for discharge that shall contain:

~~(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.~~

~~(b) A statement that he or she has fully administered the estate by making payment, settlement, or other disposition of all claims and debts that were presented and the expenses of administration.~~

~~(c) The proposed distribution of the assets of the estate.~~

~~(d) Any prior distributions that have been made.~~

~~(e) A statement that objections to this report or proposed distribution of assets be filed within 30 days.~~

~~The final accounting and petition for discharge shall be filed and served on all interested persons within 12 months after issuance of letters for estates not required to file a federal estate tax return, otherwise 12 months from the date the return is due, unless the time is extended by the court for cause shown after notice to interested persons. The petition shall state the status of the estate and the reasons for the extension.~~

~~(2) If no objection to the accounting or petition for discharge has been filed within 30 days from the date of service of copies on interested persons,~~

~~or if service has been waived, the personal representative may distribute the estate according to the plan of distribution set forth in the petition without a court order. The assets shall be distributed free from the claims of any interested person and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.~~

~~(3) If an objection to the petition for discharge has been filed within the time allowed, the court shall determine the plan of distribution and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.~~

~~(4) The final accounting required under subsection (1) may be waived upon a filing of a consent waiver with the court, by all interested persons, acknowledging that they are aware of their rights and that they waive the right to have a final accounting.~~

~~(5) The 30-day period contained in subsection (2) may be waived upon written consent of all interested persons.~~

~~(2)(6) The discharge of the personal representative shall release the personal representative of the estate and shall bar any action against the personal representative, as such or individually, and the his or her surety.~~

Section 169. Section 733.903, Florida Statutes, is amended to read:

733.903 Subsequent administration.—~~The final settlement of an estate and the discharge of the personal representative shall not prevent a revocation of the order of discharge or the subsequent issuance of letters if other property of the estate is discovered or if it becomes necessary that further administration of the estate be had for any cause. However, The order of discharge may not be revoked under this section based upon the discovery of a will or later will.~~

Section 170. Subsections (3) and (4) of section 734.101, Florida Statutes, are amended to read:

734.101 Foreign personal representative.—

(3) Debtors who have not received a written demand for payment from a personal representative or curator appointed in this state within 60 days after appointment of a personal representative in any other state or country, and whose property in Florida is subject to a mortgage or other lien securing the debt held by the foreign personal representative, may pay the foreign personal representative after the expiration of 60 days from the date of ~~his or her~~ appointment of the foreign personnel representative. Thereafter, a satisfaction of the mortgage or lien executed by the foreign personal representative, with an authenticated copy of ~~the his or her~~ letters or other evidence of authority attached, may be recorded in the public records. The satisfaction shall be an effective discharge of the mortgage or lien, irrespec-

tive of whether the debtor making payment had received a written demand before paying the debt.

(4) All persons indebted to the estate of a decedent, or having possession of personal property belonging to the estate, who have received no written demand from a personal representative or curator appointed in this state for payment of the debt or the delivery of the property are authorized to pay the debt or to deliver the personal property to the foreign personal representative after the expiration of 60 days from the date of his or her appointment of the foreign personnel representative.

Section 171. Section 734.102, Florida Statutes, is amended to read:

734.102 Ancillary administration.—

(1) If a nonresident of this state dies leaving assets in this state, credits due ~~him or her~~ from residents in this state, or liens on property in this state, a personal representative specifically designated in the decedent's will to administer the Florida property shall be entitled to have ancillary letters issued ~~to him or her~~, if qualified to act in Florida. Otherwise, the foreign personal representative of the decedent's estate shall be entitled to have letters issued ~~to him or her~~, if qualified to act in Florida. If the foreign personal representative is not qualified to act in Florida and the will names an alternate or successor who is qualified to act in Florida, the alternate or successor shall be entitled to have letters issued ~~to him or her~~. Otherwise, those entitled to a majority interest of the Florida property may have letters issued to a personal representative selected by them who is qualified to act in Florida. If the decedent dies intestate and the foreign ~~domiciliary~~ personal representative is not qualified to act in Florida, the order of preference for appointment of a personal representative as prescribed in this code shall apply. If ancillary letters are applied for by other than the domiciliary personal representative, prior notice shall be given to any domiciliary personal representative.

(2) ~~Ancillary administration shall be commenced as provided by the Florida Probate Rules. To entitle the applicant to ancillary letters, an authenticated copy of so much of the domiciliary proceedings shall be filed as will show either:~~

(a) ~~The will, petition for probate, order admitting the will to probate, and letters, if there are such; or~~

(b) ~~The petition for letters and the letters.~~

(3) ~~On filing the authenticated copy of a probated will, including any probated codicils, the court shall determine~~ If the will and any the codicils, are executed as required by the code, they shall be admitted to probate if any, comply with s. 732.502(1) or s. 732.502(2). If they comply, the court shall admit the will and any codicils to record.

(4) The ancillary personal representative shall give bond as do personal representatives generally. All proceedings for appointment and administration of the estate shall be as similar to those in original administrations as possible.

(5) Unless creditors' claims are otherwise barred by s. 733.710, the ancillary personal representative shall cause a notice to creditors to be served and published according to the requirements of chapter 733. Claims not filed in accordance with chapter 733 shall be barred as provided in s. 733.702.

~~(6)(5) After the payment of all expenses of administration and claims against the estate, the court may order the remaining property held by the ancillary personal representative transferred to the foreign domiciliary personal representative or distributed to the beneficiaries heirs or devisees.~~

~~(7)(6) Ancillary personal representatives shall have the same rights, powers, and authority as other personal representatives in Florida to manage and settle estates; to sell, lease, or mortgage local property; and to raise funds for the payment of debts, claims, and devises in the domiciliary jurisdiction. No property shall be sold, leased, or mortgaged to pay a debt or claim that is barred by any statute of limitation or of nonclaim of this state.~~

Section 172. Section 734.1025, Florida Statutes, is amended to read:

734.1025 Nonresident decedent's testate estate with property not exceeding \$50,000 ~~\$25,000~~ in this state; determination of claims.—

(1) When a nonresident decedent dies testate and leaves property subject to administration in this state the gross value of which does not exceed \$50,000 at the date of death \$25,000, the foreign domiciliary personal representative of the estate may determine the question of claims in this state before the expiration of 2 years after the decedent's death may file the 2-year period provided in s. 733.710 by filing in the circuit court of the county where any property is located an authenticated transcript of so much of the foreign domiciliary proceedings as will show the will and beneficiaries of the estate, as provided in the Florida Probate Rules. The court shall admit the will and any codicils to probate if they comply with s. 732.502(1) or (2).:

~~(a) In a testate estate, the probated will and all probated codicils of the decedent; the order admitting them to record; the letters or their equivalent; and the part of the record showing the names of the devisees and heirs of the decedent or an affidavit of the domiciliary personal representative reciting that the names are not shown or not fully disclosed by the domiciliary record and specifying the names. On presentation of the foregoing, the court shall admit the will and any codicils to probate if they comply with s. 732.502(1) or (2).~~

~~(b) In an intestate estate, the authenticated copy of letters of administration, or their equivalent, with the part of the record showing the names of the heirs of the decedent or an affidavit of the domiciliary personal representative supplying the names, as provided in paragraph (a). On presentation of the foregoing, the court shall order them recorded.~~

(2) After complying with the foregoing requirements, The foreign domiciliary personal representative may shall cause a notice to creditors to be served and published according to the relevant requirements of chapter 733 s. 731.111, notifying all persons having claims or demands against the estate to file them. Claims not filed in accordance with chapter 733 shall be barred

as provided in s. 733.702. If any claim is filed, a personal representative shall be appointed as provided in the Florida Probate Rules.

~~(3) The procedure for filing claims and objection to them and for suing on them shall be the same as for other estates, except as hereinafter provided.~~

~~(4) If no claims are filed against the estate within the time allowed, the court shall enter an order adjudging that notice to creditors has been duly given and proof thereof filed and that no claims have been filed against the estate or that all claims have been satisfied.~~

~~(5) If any claim is filed against the estate within the time allowed, the court shall send to the domiciliary personal representative a copy of the claim and a notice setting a date for a hearing to appoint an ancillary personal representative. At the hearing, the court shall appoint an ancillary personal representative according to the preferences as provided in s. 733.301.~~

~~(6) If an ancillary personal representative is appointed pursuant to subsection (5), the procedure for filing, objecting to, and suing on claims shall be the same as for other estates, except that the ancillary personal representative appointed shall have not fewer than 30 days from the date of his or her appointment within which to object to any claim filed.~~

~~(7) The filing by domiciliary personal representatives of portions of the domiciliary probate proceedings as specified in this section, and the barring of claims of creditors in such estates by the publication of notice to creditors as set forth in this section, in all cases prior to June 25, 1980, are hereby validated and confirmed.~~

Section 173. Paragraph (a) of subsection (1) and subsection (3) of section 734.104, Florida Statutes, are amended to read:

734.104 Foreign wills; admission to record; effect on title.—

(1) An authenticated copy of the will of a nonresident that devises real property in this state, or any right, title, or interest in the property, may be admitted to record in any county of this state where the property is located at any time after 2 years from the death of the decedent or at any time after the domiciliary personal representative has been discharged if there has been no proceeding to administer the estate of the decedent in this state, provided:

(a) The will was executed as required by Chapter 732 ~~complies with s. 732.502 as to form and manner of execution;~~ and

(3) If the court finds that the requirements of this section have been met ~~has been complied with,~~ it shall enter an order admitting the foreign will to record.

Section 174. Section 734.201, Florida Statutes, is amended to read:

734.201 Jurisdiction by act of foreign personal representative.—A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding concerning the estate by:

(1) Filing authenticated copies of the domiciliary proceedings under s. ~~734.104~~; 734.103.

(2) Receiving payment of money or taking delivery of personal property, under s. ~~734.101~~; or.

(3) Doing any act as a personal representative in this state that would have given the state jurisdiction over that person ~~him or her~~ as an individual.

Section 175. Section 734.202, Florida Statutes, is amended to read:

734.202 Jurisdiction by act of decedent.—In addition to jurisdiction conferred by s. 734.201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that the ~~his or her~~ decedent was subject to jurisdiction immediately before death.

Section 176. Section 735.101, Florida Statutes, is repealed:

~~735.101—Family administration; nature of proceedings.—Family administration may be had in the administration of a decedent's estate when it appears:~~

~~(1) In an intestate estate, that the heirs at law of the decedent consist solely of a surviving spouse, lineal descendants, and lineal ascendants, or any of them.~~

~~(2) In a testate estate, that the beneficiaries under the will consist of a surviving spouse, lineal descendants, and lineal ascendants, or any of them, and that any specific or general devise to others constitutes a minor part of the decedent's estate.~~

~~(3) In a testate estate, that the decedent's will does not direct administration as required by chapter 733.~~

~~(4) That the value of the gross estate, as of the date of death, for federal estate tax purposes is less than \$60,000.~~

~~(5) That the entire estate consists of personal property or, if real property forms part of the estate, that administration under chapter 733 has proceeded to the point that all claims of creditors have been processed or barred.~~

Section 177. Section 735.103, Florida Statutes, is repealed:

~~735.103—Petition for family administration.—A verified petition for family administration shall contain, in addition to the statements required by s. 733.202, the following:~~

~~(1) Facts showing that petitioners are entitled to family administration, as provided in s. 735.101.~~

~~(2) A complete list of the assets of the gross estate for federal estate tax purposes and their estimated value.~~

~~(3) An appropriate statement that the estate is not indebted or that provision for payment of debts has been made or the claims are barred.~~

~~(4) A proposed schedule of distribution of all assets to those entitled thereto as surviving spouse, heirs, beneficiaries, or creditors.~~

~~The petition shall be signed and verified by all beneficiaries and the surviving spouse, if any. The petition may be signed on behalf of a minor or an incompetent by her or his legal guardian or, if none, by her or his natural guardian.~~

Section 178. Section 735.107, Florida Statutes, is repealed:

~~735.107—Family administration distribution.—~~

~~(1) Upon filing the petition for family administration, the will, if any, shall be proved in accordance with chapter 733 and be admitted to probate.~~

~~(2) If the estate consists of personal property only, then, after such hearing as the court may require, an order of family administration may be entered allowing immediate distribution of the assets to the persons entitled to them.~~

~~(3) The order of family administration and the distribution so entered shall have the following effect:~~

~~(a) Those to whom specified parts of the decedent's estate are assigned by the order shall be entitled to receive and collect the parts and to have the parts transferred to them. They may maintain actions to enforce the right.~~

~~(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of the decedent are registered are authorized and empowered to comply with the order by paying, delivering, or transferring to those specified in the order the parts of the decedent's estate assigned to them by the order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.~~

~~(c) After the entry of the order, bona fide purchasers for value from those to whom property of the decedent may be assigned by the order shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other heirs and devisees.~~

~~(d) Property of the decedent that is not exempt from claims of creditors and that remains in the hands of those to whom it may be assigned by the order shall continue to be liable for claims against the decedent until barred as provided in this law.~~

~~(e) The petitioners for the order of family administration shall be personally liable for all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by~~

~~each petitioner, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.~~

~~(f) After 2 years from the death of the decedent, neither her nor his estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.~~

~~(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but was not included in the order of family administration and distribution may enforce her or his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.~~

~~(4)(a) If the estate of the decedent includes real property and administration under chapter 733 has proceeded to the point that all claims of creditors have been processed or barred, or upon the satisfaction of all claims of creditors, if any, and after such hearing as the court may require, an order of family administration may be entered and the personal representative authorized to make distribution of the assets to the persons entitled to them. Upon evidence satisfactory to the court that distribution has been made, the court shall enter an order discharging the personal representative.~~

~~(b) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of family administration and distribution may enforce her or his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.~~

Section 179. Subsection (2) of section 735.201, Florida Statutes, is amended to read:

735.201 Summary administration; nature of proceedings.—Summary administration may be had in the administration of either a resident or nonresident decedent's estate, when it appears:

(2) That the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$75,000 ~~\$25,000~~ or that the decedent has been dead for more than 2 years.

Section 180. Section 735.203, Florida Statutes, is amended to read:

735.203 Petition for summary administration.—

(1) A petition for summary administration may be filed by any beneficiary, ~~heir at law, or person nominated as personal representative in the decedent's will offered for probate, and shall be signed and verified by:~~ The petition must be signed and verified by

(a) the surviving spouse, if any and any; ~~the heirs at law or beneficiaries,~~

(2) If a person named in subsection (1) has died, is incapacitated, or is a minor, or has conveyed or transferred all interest in the property of the estate, then, as to that person, the petition must be signed and certified by:

(a) The personal representative, if any, of a deceased person or, if none, the surviving spouse, if any, and the beneficiaries;

(b) The guardian of an incapacitated person or a minor; or

(c) The grantee or transferee of any of them shall be authorized to sign and verify the petition instead of the beneficiary or surviving spouse.

(3) The joinder in, or consent to, a petition for summary administration is not required of a beneficiary who will receive full distributive share under the proposed distribution. Any beneficiary not joining or consenting shall receive formal notice of the petition, who are sui juris; and the guardians of any heirs at law or beneficiaries who are not sui juris; or

~~(b) The persons described by s. 735.209.~~

~~(2) A petition for summary administration shall contain, in addition to the statements required by s. 733.202(2)(b) and (c), the following:~~

~~(a) Facts showing that petitioners are entitled to summary administration as provided in s. 735.201.~~

~~(b) A complete list of the assets of the estate and their estimated value, together with those assets claimed to be exempt.~~

~~(c) A statement that the estate is not indebted or that provision for payment of debts has been made.~~

~~(d) A proposed schedule of distribution of all assets to those entitled thereto as surviving spouse, beneficiaries, or creditors.~~

Section 181. Section 735.206, Florida Statutes, is amended to read:

735.206 Summary administration distribution.—

(1) Upon the filing of the petition for summary administration, the will, if any, shall be proved in accordance with chapter 733 and be admitted to probate.

(2) Prior to entry of the order of summary administration, the petitioner shall make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.

~~(3)(2) The court may enter After such hearing as the court may require, an order of summary administration may be entered allowing immediate distribution of the assets to the persons entitled to them.~~

~~(4)(3) The order of summary administration and distribution so entered shall have the following effect:~~

(a) Those to whom specified parts of the decedent's estate, including exempt property, are assigned by the order shall be entitled to receive and

collect the parts and to have the parts transferred to them. They may maintain actions to enforce the right.

(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of the decedent are registered are authorized and empowered to comply with the order by paying, delivering, or transferring to those specified in the order the parts of the decedent's estate assigned to them by the order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

(c) After the entry of the order, bona fide purchasers for value from those to whom property of the decedent may be assigned by the order shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries heirs and devisees.

(d) Property of the decedent that is not exempt from claims of creditors and that remains in the hands of those to whom it may be assigned by the order shall continue to be liable for claims against the decedent until barred as provided in the code this law. Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded reasonable attorneys fees as an element of costs against those who joined in the petition.

(e) The recipients of the decedent's property under petitioners for the order of summary administration shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by each recipient petitioner, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

(f) After 2 years from the death of the decedent, neither the decedent's estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.

(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution may enforce all his or her rights in appropriate proceedings against those who procured the order and, if when successful, shall be awarded reasonable attorney's fees as an element of costs.

Section 182. Section 735.2063, Florida Statutes, is amended to read:

735.2063 Notice to creditors.—

(1) Any person who has obtained received an order of summary administration may publish a notice to creditors according to the relevant requirements of s. ~~733.2121~~ ~~731.111~~, notifying all persons having claims or demands against the estate of the decedent that an order of summary administration has been entered by the court. The Such notice shall will specify the total ~~cash~~ value of the estate and the names and addresses of those to whom it has been assigned by the such order. ~~Such notice, if published, shall be~~

~~published once a week for 2 consecutive weeks in a newspaper published in the county where such order was entered, and proof of publication of such notice shall be filed with the court.~~

(2) If proof of publication of the such notice is filed with the court, all claims and demands of creditors against the estate of the decedent who are not known or are reasonably ascertainable shall be forever barred unless the such claims and demands are filed with the court within 3 months after ~~from~~ the first publication of the such notice.

Section 183. Section 735.209, Florida Statutes, is repealed:

~~735.209 Joinder of heirs, devisees, or surviving spouse in summary administration.—~~

~~(1) When any heir, devisee, or surviving spouse is authorized or required under this part to join in any agreement or petition and any such person has died, become incompetent or is a minor, or has conveyed or transferred all of his or her interest in the property of the estate, then:~~

~~(a) The heirs, devisees, and surviving spouse, if any, of a deceased person,~~

~~(b) The personal representative, if any, of the estate of a deceased person,~~

~~(c) The guardian of an incompetent or minor, or~~

~~(d) The grantee or transferee of any of them~~

~~shall be authorized to join in such agreement or petition instead of the heir, devisee, or surviving spouse.~~

~~(2) The joinder in, or consent to, a petition for summary administration is not required of an heir or beneficiary who will receive his or her full distributive share under the proposed distribution. Any beneficiary not joining or consenting shall receive formal notice of the petition.~~

Section 184. Subsection (3) of section 735.301, Florida Statutes, is amended to read:

735.301 Disposition without administration.—

(3) Any person, firm, or corporation paying, delivering, or transferring property under the authorization shall be forever discharged from any liability thereon.

Section 185. Section 735.302, Florida Statutes, is amended to read:

735.302 Income tax refunds in certain cases.—

(1) In any case when the United States Treasury Department determines that an overpayment of federal income tax exists and the person in whose favor the overpayment is determined is dead at the time the overpayment of tax is to be refunded, and irrespective of whether the decedent had filed

a joint and several or separate income tax return, the amount of the overpayment, if not in excess of \$2,500 ~~\$500~~, may be refunded as follows:

- (a) Directly to the surviving spouse on his or her verified application; or
- (b) If there is no surviving spouse, to one of the decedent's children who is designated in a verified application purporting to be executed by all of the decedent's children over the age of 14 years.

In either event, the application must show that the decedent was not indebted, that provision has been made for the payment of the decedent's debts, or that the entire estate is exempt from the claims of creditors under the constitution and statutes of the state, and that no administration of the estate, including summary administration, has been initiated and that none is planned, to the knowledge of the applicant.

(2) If a refund is made to the surviving spouse or designated child pursuant to the application, the refund shall operate as a complete discharge to the United States from liability from any action, claim, or demand by any beneficiary of the decedent or other person. ~~Nothing in~~ This section shall be construed as establishing the ownership or rights of the payee ~~any person~~ in the refund ~~so distributed~~.

Section 186. Section 737.208, Florida Statutes, is created to read:

737.208 Administration pending outcome of contest or other proceeding.—

(1) Pending the outcome of a proceeding filed to determine the validity of all or part of a trust or the beneficiaries of all or part of a trust, the trustee shall proceed with the administration of the trust as if no proceeding had been commenced, except that no distribution may be made to a beneficiary in contravention of the rights of those persons that may be affected by the outcome of the proceeding.

(2) Upon motion of a party and after notice to interested persons, a court may, upon good cause shown, make an exception to the prohibition under subsection (1) and authorize the trustee to distribute trust assets to a beneficiary subject to any conditions the court, in its discretion, may impose, including the posting of bond by the beneficiary.

Section 187. Section 737.3054, Florida Statutes, is amended to read:

737.3054 Trustee's duty to pay expenses and obligations of grantor's settlor's estate.—

(1) A trustee of a trust described in s. 733.707(3) shall pay to the personal representative of a grantor's settlor's estate any amounts that the personal representative certifies in writing to the trustee are required to pay the expenses of the administration and obligations of the grantor's settlor's estate ~~and the enforceable claims of the settlor's creditors~~. Payments made by a trustee, unless otherwise provided in the trust instrument, must be charged as expenses of the trust without a contribution from anyone. The

interests ~~interest~~ of all beneficiaries of such a trust are subject to the provisions of this subsection; however, the payments must be made from assets or property or the proceeds thereof, other than assets proscribed in s. 733.707(3), which are included in the grantor's settlor's gross estate for federal estate tax purposes.

(2) Unless a grantor settlor provides by will, or designates in a trust described in s. 733.707(3) the funds or property passing under ~~the a trust described in s. 733.707(3)~~ to be so used, the expenses of the administration and obligations of the grantor's settlor's estate ~~and enforceable claims of the settlor's creditors~~ must be paid from the trust in the following order:

(a) Property of the residue of the trust remaining after all distributions that are to be satisfied by reference to a specific property or type of property, fund, or sum;

(b) Property that is not to be distributed from specified or identified property or a specified or identified item of property; and

(c) Property that is to be distributed from specified or identified property or a specified or identified item of property.

(3) Trust distributions that are to be satisfied from specified or identified property must be classed as distributions to be satisfied from the general assets of the trust and not otherwise disposed of in the trust instrument upon the failure or insufficiency of funds or property from which payment should be made, to the extent of the insufficiency. Trust distributions given for valuable consideration abate with other distributions of the same class only to the extent of the excess over the value of the consideration until all others of the same class are exhausted. Except as provided in this section, trust distributions abate equally and ratably and without preference or priority between real and personal property. When a specified or identified item of property that has been designated for distribution in the trust instrument or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the beneficiary whose property has been sold or taken, and before distribution the trustee shall determine the amounts of the respective contributions, and they must be paid or withheld before distribution is made.

(4) The trustee shall pay the expenses of trust administration, including compensation of trustees and their attorneys, before and in preference to the expenses of the administration and obligations of the grantor's settlor's estate ~~and enforceable claims of the settlor's creditors~~.

Section 188. Section 737.306, Florida Statutes, is amended to read:

737.306 Personal liability of trustee.—

(1)(a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts, except contracts for attorneys' fees, properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate ~~unless the trustee he or she fails to reveal that his or her~~ representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if the trustee is personally at fault.

(c) Claims based on contracts, except contracts for attorneys' fees, entered into by a trustee in his or her fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's his or her fiduciary capacity, whether or not the trustee is personally liable.

(2) Issues of liability between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification, or in any other appropriate proceeding.

(3) A successor trustee is not personally liable for any action taken or omitted to be taken by any prior trustee; nor does any successor trustee have a duty to institute any action against any prior trustee, or file any claim against any prior trustee's estate, for any of the prior trustee's acts or omissions as trustee under any of the following circumstances:

(a) The successor trustee succeeds a trustee who was also the grantor of a trust that was revocable during the time that the grantor served as trustee;

(b) As to any beneficiary who has waived any accounting required by s. 737.303, but only as to the periods included in the such waiver;

(c) As to any beneficiary who has released the successor trustee from the such duty to institute any action or file any claim;

(d) As to any person who is not a beneficiary within the meaning of s. 737.303(4)(b); or

(e) As to any beneficiary described in s. 737.303(4)(b):

1. If a super majority of the reasonably ascertainable current income or principal beneficiaries described in s. 737.303(4)(b)1. and a super majority of the reasonably ascertainable remainder beneficiaries described in s. 737.303(4)(b)2. have released the successor trustee;

2. If the beneficiary has not delivered a written request to the successor trustee to institute an action or file a claim against the prior trustee within 6 months after the date of the successor trustee's acceptance of the trust, if the successor trustee has notified the beneficiary in writing of its acceptance in accordance with s. 737.303(1) and that such writing advises the beneficiary that, unless the beneficiary delivers the such written request within 6 months after the date of acceptance, the his or her right to proceed against the successor trustee will be barred pursuant to this section; or

3. For any action or claim that the beneficiary is barred from bringing against the prior trustee.

~~(4)(a) Two years after the death of a settlor, neither a trust described in s. 733.707(3) as established by the settlor, the trustee of the trust, nor any beneficiary may be held liable for any claim or cause of action against the settlor by a creditor who seeks to recover from the trust, trustee, or beneficiary.~~

~~(b) This subsection does not apply to a creditor who has timely filed a claim against the settlor's estate under s. 733.702 within 2 years after the settlor's death and whose claim has not been paid or otherwise disposed of, even if the settlor's estate proceedings have been closed or otherwise completed.~~

~~(c) This subsection does not affect the lien of a duly recorded mortgage or security interest or the right to foreclose and enforce the mortgage or lien.~~

~~(f)(5) For the purposes of this section, a super majority of beneficiaries means at least two-thirds in interest of the beneficiaries if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means at least two-thirds in number of the beneficiaries. A release or waiver under this section may be exercised by a legal representative or natural guardian of the beneficiary without the filing of any proceeding or approval of any court. Nothing in this subsection (3) affects any liability of the prior trustee or the right of the successor trustee or any beneficiary to pursue an action or claim against the prior trustee.~~

Section 189. Section 737.3061, Florida Statutes, is created to read:

737.3061 Limitations on actions against certain trusts.—

(1) After the death of a grantor, no creditor of the grantor may bring, maintain, or continue any direct action against a trust described in s. 733.707(3), the trustee of the trust or any beneficiary of the trust that is dependent on the individual liability of the grantor. Those claims and causes of action against the grantor shall be presented and enforced against the grantor's estate as provided in part VII of chapter 733, and the personal representative of the grantor's estate may obtain payment from the trustee of a trust described in s. 733.707(3) as provided in ss. 733.607(2), 733.707(3), and 737.3054(1).

(2) This section shall not preclude a direct action against a trust described in s. 733.707(3), the trustee of the trust, or a beneficiary of the trust that is not dependent on the individual liability of the grantor.

(3) This section does not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

Section 190. Section 737.308, Florida Statutes, is amended to read:

737.308 Notice of trust.—

(1) Upon the death of a grantor settlor of a trust described in s. 733.707(3), the trustee must file a notice of trust with the court of the county

of the grantor's settlor's domicile and the court having jurisdiction of the grantor's settlor's estate.

(2) The notice of trust must contain the name of the grantor settlor, the grantor's settlor's date of death, the title of the trust, if any, the date of the trust, and the name and address of the trustee.

(3) If the grantor's settlor's probate proceeding has been commenced, the clerk must notify the trustee in writing of the date of the commencement of the probate proceeding and the file number.

(4) The clerk shall file and index the notice of trust in the same manner as a caveat, unless there exists a probate proceeding for the grantor's settlor's estate in which case the notice of trust must be filed in the probate proceeding and the clerk shall send a copy to the personal representative.

(5) The clerk shall send a copy of any caveat filed regarding the grantor settlor to the trustee, and the Notice of Trust to any caveator, unless there is a probate proceeding pending and the personal representative and the trustee are the same.

~~(6) In any proceeding affecting the expenses of the administration of the estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate.~~

~~(6)(7) Any proceeding affecting the expenses of the administration or obligations of the grantor's estate or any claims described in s. 733.702(1) prior to the trustee filing a notice of trust are binding upon the trustee.~~

~~(7)(8) The trustee's failure to file the notice of trust does not affect the trustee's obligation to pay expenses of administration and obligations of the grantor's estate enforceable claims as provided in s. 733.607(2).~~

Section 191. Section 215.965, Florida Statutes, is amended to read:

215.965 Disbursement of state moneys.—Except as provided in s. 17.076, s. 253.025(14), s. 259.041(18), s. 717.124(5), s. 732.107(5)(6), or s. 733.816(5), all moneys in the State Treasury shall be disbursed by state warrant, drawn by the Comptroller upon the State Treasury and payable to the ultimate beneficiary. This authorization shall include electronic disbursement.

Section 192. Subsection (3) of section 660.46, Florida Statutes, is amended to read:

660.46 Substitution of fiduciaries.—

(3) Unless a waiver or consent shall be filed in the proceedings as provided in subsection (4), the provisions of s. 731.301(1)(a), (c), and ~~(2)(d)~~ shall apply with respect to notice of the proceedings to all persons who are then cofiduciaries with the original fiduciary, other than a person joining as a petitioner in the proceedings; to all persons named in the governing instrument as substitutes or successors to the fiduciary capacity of the original fiduciary; to the persons then living who are entitled under the governing

instrument to appoint a substitute or successor to act in the fiduciary capacity of the original fiduciary; to all vested beneficiaries of the fiduciary account; and to all then-living originators of the governing instrument. Unless a waiver or consent shall be filed in the proceedings as provided in subsection (4), the provisions of s. 731.301(2) shall apply with respect to notice to all contingent beneficiaries of the fiduciary account. Only the persons or classes of persons described in the foregoing provisions of this subsection shall be deemed to be interested persons for the purposes of this section and the proceedings and notices provided for in this section; and the provisions of ss. 731.301(3) and 731.303(3)(4) and (4)(5), relating to notice requirements, the effect of notice, and representation of interests, shall apply to the proceedings provided for in this section.

Section 193. Subsection (1) of section 737.111, Florida Statutes, is amended to read:

737.111 Execution requirements for express trusts.—

(1) The testamentary aspects of a trust defined in s. 731.201(34)(33), are invalid unless the trust instrument is executed by the grantor settlor with the formalities required for the execution of a will.

Section 194. In editing manuscript for the next official version of the Florida Statutes, the Division of Statutory Revision of the Office of Legislative Services is directed to:

(1) Change the title of Part II of Chapter 732, Florida Statutes, from “Elective Share of Surviving Spouse” to “Elective Share of Surviving Spouse; Rights in Community Property.”

(2) Change the title of Part III of Chapter 733, Florida Statutes, from “Priority to Administer and Qualifications of Personal Representative” to “Preference in Appointment and Qualifications of Personal Representative.”

(3) Change the title of Part IV of Chapter 733, Florida Statutes, from “Appointment of Personal Representative; Bonds” to “Fiduciary Bonds.”

(4) Change the title of Part V of Chapter 733, Florida Statutes, from “Curators; Successor Personal Representative; Removal” to “Curators; Resignation and Removal of Personal Representatives.”

Section 195. This act shall take effect January 1, 2002. The substantive rights of all persons that have vested prior to January 1, 2002, shall be determined as provided in former chapters 63, 215, 409, 660, and 731-737, Florida Statutes, as they existed prior to January 1, 2002. The procedures for the enforcement of substantive rights which have vested prior to January 1, 2002, shall be as provided in this act, except that any Family Administration filed before January 1, 2002, may be completed as a Family Administration.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.