

Senate Bill No. 2700

An act relating to probate and trusts and statutes of limitation; amending s. 731.103, F.S.; providing that the fact that a missing person was subject to a specific peril of death is evidence for a finding of a presumptive death; amending ss. 731.201 and 731.303, F.S.; revising the conflict of interest standard in the definitions of “beneficiary,” “devisee,” “interested person,” and in judicial orders binding the trustee; amending s. 732.217, F.S.; eliminating the requirement that property be homestead property to be excepted from the application of the Florida Uniform Disposition of Community Property Rights at Death Act; amending s. 732.502, F.S.; providing that military testamentary instruments executed pursuant to federal law are valid in this state; amending s. 732.603, F.S.; revising provisions with respect to antilapse provisions; amending s. 733.205, F.S.; revising provisions with respect to the probate of notarial wills; amending s. 733.212, F.S.; revising provisions with respect to the notice of administration; amending s. 733.2121, F.S.; revising the time in which notice to creditors must be served; amending s. 733.608, F.S.; revising provisions with respect to the general power of the personal representative; amending s. 733.609, F.S.; revising provisions with respect to awarding taxable costs and attorney’s fees with respect to improper exercise of power or the breach of fiduciary duty; amending s. 734.1025, F.S., to conform to the amendment to s. 732.502, F.S.; amending s. 735.2063, F.S.; revising provisions with respect to notice to creditors; amending s. 737.106, F.S.; revising provisions with respect to revocable trust prior to dissolution of marriage; amending s. 737.2035, F.S.; revising provisions with respect to costs and attorney’s fees in trust proceedings; amending s. 737.204, F.S.; revising provisions with respect to proceedings for review of employment of agents and review of compensation of trustee and employees of trust; amending s. 737.404, F.S.; revising provisions with respect to powers exercisable by joint trustees; creating s. 737.6035, F.S.; providing antilapse provisions with respect to inter vivos trusts under certain circumstances; amending s. 737.627, F.S.; revising provisions with respect to costs and attorney’s fees; amending s. 95.031, F.S.; including constructive fraud in actions based upon fraud for statute-of-limitations computation; providing such amendments are remedial in nature and have retrospective effect; reenacting ss. 709.08 and 717.1243, F.S., to incorporate by reference the amendment of s. 731.201, F.S.; reenacting ss. 660.46, 731.302, 737.303, and 737.307, F.S., to incorporate by reference the amendment to s. 731.303, F.S.; reenacting s. 382.025, F.S., to incorporate by reference the amendment to s. 732.502, F.S.; reenacting ss. 732.604 and 732.801, F.S., to incorporate by reference the amendment to s. 732.603, F.S.; reenacting s. 733.701, F.S., to incorporate by reference the amendment to s. 733.2121, F.S.; reenacting s. 63.182, F.S., to incorporate by reference the amendment to s. 95.031, F.S.; providing an effective date.

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

Section 1. Subsection (3) of section 731.103, Florida Statutes, is amended to read:

731.103 Evidence as to death or status.—In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(3) A person who is absent from the place of his or her last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier. Evidence showing that the absent person was exposed to a specific peril of death may be a sufficient basis for the court determining at any time after such exposure that he or she died less than 5 years after the date on which his or her absence commenced. A petition for this determination shall be filed in the county in Florida where the decedent maintained his or her domicile or in any county of this state if the decedent was not a resident of Florida at the time his or her absence commenced.

Section 2. Subsections (2), (9), and (21) of section 731.201, Florida Statutes, are 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:

(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 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. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, the beneficiary or beneficiaries of the trust as defined in s. 737.303(4)(b) shall be regarded as 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.~~

(9) “Devisee” means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, the beneficiary or beneficiaries of the trust as defined in s. 737.303(4)(b) shall be regarded as a devisee ~~The beneficiaries of the trust are not devisees.~~

(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, 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 who has received complete 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.

Section 3. Section 731.303, Florida Statutes, is amended to read:

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

(1) 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.

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. However, for purposes of this section, a conflict of interest shall be deemed to exist when each trustee of a trust that is a beneficiary of the estate is also a personal representative of the estate.

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 interest is represented by another party having the same or greater quality of interest in the proceeding.

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

(3) In ~~judicial~~ proceedings involving the administration of estates or trusts, notice is required as follows:

(a) Notice as prescribed by ~~law the Florida Probate Rules~~ shall be given to every interested person, or to one who can bind the interested person as described in paragraph (1)(a) or paragraph (1)(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)(a) or paragraph (1)(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) 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 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) When a sole holder or coholder of a general, special, or limited power of appointment, including an exercisable power of amendment or revocation over property in an estate or trust, is bound by:

(a) Agreements, waivers, consents, or approvals; or

(b) Accounts, trust accountings, or other written reports that adequately disclose matters set forth therein,

then all persons who may take by virtue of, and whose interests are subject to, the exercise or nonexercise of the power are also bound, but only to the extent of their interests which could otherwise be affected by the exercise or nonexercise of the power.

Section 4. Subsection (2) of section 732.217, Florida Statutes, is amended to read:

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

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

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

(b) Is traceable to that community property.

Section 5. Subsections (3) and (4) of section 732.502, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

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

(3) Any will executed as a military testamentary instrument in accordance with Section 1044d of Title 10 United States Code, Chapter 53, by a person who is eligible for military legal assistance is valid as a will in this state.

Section 6. Paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 732.603, Florida Statutes, are 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:

(c) Is required by the will or by operation of law to be treated as having 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 had survived the testator shall be a devisee for purposes of this section whether that person died 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:

(c) Is required by the will or by operation of law to be treated as having predeceased the testator,

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

Section 7. Subsection (1) of 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 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, or whose official position, signature, and seal of office have been authenticated according to the requirements of the Hague Convention of 1961, is presented to the court, it may be admitted to probate if the original could have been admitted to probate in this state.

Section 8. Paragraph (c) of subsection (1) of section 733.212, Florida Statutes, is amended to read:

733.212 Notice of administration; filing of objections.—

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

(c) The trustee of any trust described in s. 733.707(3) and each beneficiary of the trust as defined in s. 737.303(4)(b), if each trustee is also a personal representative of the estate; and

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.

Section 9. Subsection (1) of section 733.2121, Florida Statutes, is amended 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 during ~~within~~ the time periods set forth in s. ss. 733.702 and 733.710, or be forever barred.

Section 10. Subsection (2) of section 733.608, Florida Statutes, is amended, and subsections (3)-(13) are added to that section, to read:

733.608 General power of the personal representative.—

(2) If property that reasonably appears to the personal representative to be protected homestead is not occupied by 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 person having an interest in the property 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.

(3) If the personal representative expends funds or incurs obligations to preserve, maintain, insure, or protect the property referenced in subsection (2), the personal representative shall be entitled to a lien on that property and its revenues to secure repayment of those expenditures and obligations incurred. These expenditures and obligations incurred, including, but not limited to, fees and costs, shall constitute a debt owed to the personal representative that is charged against and which may be secured by a lien on the protected homestead, as provided in this section. The debt shall include any

amounts paid for these purposes after the decedent's death and prior to the personal representative's appointment to the extent later ratified by the personal representative in the court proceeding provided for in this section.

(a) On the petition of the personal representative or any interested person, the court having jurisdiction of the administration of the decedent's estate shall adjudicate the amount of the debt after formal notice to the persons appearing to have an interest in the property.

(b) The persons having an interest in the protected homestead shall have no personal liability for the repayment of the above noted debt. The personal representative may enforce payment of the debt through any of the following methods:

1. By foreclosure of the lien as provided in this section;

2. By offset of the debt against any other property in the personal representative's possession that otherwise would be distributable to any person having an interest in the protected homestead, but only to the extent of the fraction of the total debt owed to the personal representative the numerator of which is the value of that person's interest in the protected homestead and the denominator of which is the total value of the protected homestead; or

3. By offset of the debt against the revenues from the protected homestead received by the personal representative.

(4) The personal representative's lien shall attach to the property and take priority as of the date and time a notice of that lien is recorded in the official records of the county where that property is located and the lien may secure expenditures and obligations incurred, including, but not limited to, fees and costs made before or after recording the notice. The notice of lien may be recorded prior to the adjudication of the amount of the debt. The notice of lien also shall be filed in the probate proceeding but failure to do so shall not affect the validity of the lien. A copy of the notice of lien shall be served by formal notice upon each person appearing to have an interest in the property. The notice of lien shall state:

(a) The name and address of the personal representative and the personal representative's attorney;

(b) The legal description of the property;

(c) The name of the decedent and also, to the extent known to the personal representative, the name and address of each person appearing to have an interest in the property; and

(d) That the personal representative has expended or is obligated to expend funds to preserve, maintain, insure, and protect the property and that the lien stands as security for recovery of those expenditures and obligations incurred, including, but not limited to, fees and costs.

Substantial compliance with the foregoing provisions shall render the notice in comportment with this section.

(5) The lien shall terminate upon the earliest of:

(a) Recording a satisfaction or release signed by the personal representative in the official records of the county where the property is located;

(b) The discharge of the personal representative when the estate administration is complete;

(c) One year from the recording of the lien in the official records unless a proceeding to determine the debt or enforce the lien has been filed; or

(d) The entry of an order releasing the lien.

(6) Within 14 days after receipt of the written request of any interested person, the personal representative shall deliver to the requesting person at a place designated in the written request an estoppel letter setting forth the unpaid balance of the debt secured by the lien referred to in this section. After complete satisfaction of the debt secured by the lien, the personal representative shall record within 30 days after complete payment, a satisfaction of the lien in the official records of the county where the property is located. If a judicial proceeding is necessary to compel compliance with the provisions of this subsection, the prevailing party shall be entitled to an award of attorney's fees and costs.

(7) The lien created by this section may be foreclosed in the manner of foreclosing a mortgage under the provisions of chapter 702.

(8) In any action for enforcement of the debt described in this section, the court shall award taxable costs as in chancery actions, including reasonable attorney's fees.

(9) A personal representative entitled to recover a debt for expenditures and obligations incurred, including, but not limited to, fees and costs, under this section may be relieved of the duty to enforce collection by an order of the court finding:

(a) That the estimated court costs and attorney's fees in collecting the debt will approximate or exceed the amount of the recovery; or

(b) That it is impracticable to enforce collection in view of the improbability of collection.

(10) A personal representative shall not be liable for failure to attempt to enforce collection of the debt if the personal representative reasonably believes it would have been economically impracticable.

(11) The personal representative shall not be liable for failure to take possession of the protected homestead or to expend funds on its behalf. In the event that the property is determined by the court not to be protected homestead, subsections (2)-(10) shall not apply and any liens previously filed shall be deemed released upon recording of the order in the official records of the county where the property is located.

(12) Upon the petition of an interested party to accommodate a sale or the encumbrance of the protected homestead, the court may transfer the lien provided for in this section from the property to the proceeds of the sale or encumbrance by requiring the deposit of the proceeds into a restricted account subject to the lien. The court shall have continuing jurisdiction over the funds deposited. The transferred lien shall attach only to the amount asserted by the personal representative and any proceeds in excess of that amount shall not be subject to the lien or otherwise restricted under this section. Alternatively, the personal representative and the apparent owners of the protected homestead may agree to retain in escrow the amount demanded as reimbursement by the personal representative, to be held there under the continuing jurisdiction of the court pending a final determination of the amount properly reimbursable to the personal representative under this section.

(13) This act shall apply to estates of decedents dying after the date on which this act becomes a law.

Section 11. Section 733.609, Florida Statutes, is amended to read:

733.609 Improper exercise of power; breach of fiduciary duty.—

(1) 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.

(2) When awarding taxable costs, including attorney's fees, under this section, the court in its discretion may direct payment from a party's interest, if any, in the estate or enter a judgment which may be satisfied from other property of the party, or both.

(3) This section shall apply to all proceedings commenced hereunder after the effective date, without regard to the date of the decedent's death.

Section 12. Subsection (1) of section 734.1025, Florida Statutes, is amended to read:

734.1025 Nonresident decedent's testate estate with property not exceeding \$50,000 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, the foreign personal representative of the estate before the expiration of 2 years after the decedent's death may file in the circuit court of the county where any property is located an authenticated transcript of so much of the foreign 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), or (3).

Section 13. Section 735.2063, Florida Statutes, is amended to read:

735.2063 Notice to creditors.—

(1) Any person who has obtained an order of summary administration may publish a notice to creditors according to the relevant requirements of s. 733.2121, 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 notice shall specify the total value of the estate and the names and addresses of those to whom it has been assigned by the order.

(2) If proof of publication of the notice is filed with the court, all claims and demands of creditors against the estate of the decedent who are not known or are not reasonably ascertainable shall be forever barred unless the claims and demands are filed with the court within 3 months after the first publication of the notice.

Section 14. Section 737.106, Florida Statutes, is amended to read:

737.106 Revocable trust prior to dissolution of marriage.—Unless the trust instrument or the judgment for dissolution of marriage or divorce expressly provides otherwise, if a revocable trust is executed by a husband or wife as settlor prior to annulment of the marriage or entry of a judgment for dissolution of marriage or divorce of settlor from settlor's spouse, then any provision of the trust which affects the settlor's ~~divorced~~ spouse will become void upon annulment of the marriage or entry of the judgment of dissolution of marriage or divorce, and any such trust will be administered and construed as if the settlor's ~~divorced~~ spouse had died on the date of the annulment or upon entry of the judgment for dissolution of marriage or divorce.

Section 15. Subsection (2) of section 737.2035, Florida Statutes, is amended to read:

737.2035 Costs and attorney's fees in trust proceedings.—

(2) Any attorney who has rendered services to a trust may be awarded reasonable compensation from the trust. The attorney may apply to the court for an order awarding attorney's fees, and, after notice and service upon the trustee and all beneficiaries entitled to an accounting under s. 737.303, the court shall enter its order on the fee application.

Section 16. Section 737.204, Florida Statutes, is amended to read:

737.204 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.—

(1) After notice to all interested persons, the court may review the propriety of the employment by a trustee of any person, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of any the compensation paid to that of any person or to so employed and of the compensation determined by the trustee for his or her own services. ~~A person who has received excessive compensation from a trust may be ordered to make a refund of the excess.~~

(2) If the settlor's estate is being probated, and the settlor's trust or the trustee of the settlor's trust is a beneficiary under the settlor's will, the trustee, any person employed by the trustee the attorney, or any interested person may have the propriety of employment and the reasonableness of the compensation of the trustee or any person employed by the trustee determined in the probate proceeding.

(3) The burden of proof of propriety of the employment and the reasonableness of the compensation shall be upon the trustee and the person employed by the trustee. Any person who is determined to have received excessive compensation from a trust for services rendered may be ordered to make appropriate refunds In any proceeding under this section the petitioner shall either:

(a) ~~Serve notice on all interested persons in the manner provided for service of formal notice under s. 731.301, together with a notice advising the interested person that an answer to the petition must be filed and served on petitioner within 20 days from the service of the petition or the petition may be considered ex parte, and such notice shall be sufficient for the court to acquire jurisdiction for this proceeding over the person receiving formal notice to the extent of the person's interest in the trust; or~~

(b) ~~Obtain jurisdiction over interested persons in any other manner permitted by law.~~

(4) Court proceedings to determine reasonable compensation of a trustee or any person employed by a trustee, if required, are a part of the trust administration process. The costs, including attorney's 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 trust unless the court finds the compensation paid or requested to be substantially unreasonable. The court shall direct from which part of the trust assets the compensation shall be paid Persons given notice as provided in this section shall be bound by all orders entered on the petition.

(5) The court may determine reasonable compensation for a trustee or any person employed by a trustee 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 trust. The court shall direct from which part of the trust assets the fee shall be paid.

(6) Persons given notice as provided in this section shall be bound by all orders entered on the petition.

(7) In a proceeding pursuant to subsection (2), the petitioner may serve formal notice as provided in the Florida Probate Rules, and such notice shall be sufficient for the court to acquire jurisdiction over the person receiving it to the extent of the person's interest in the trust.

Section 17. Subsection (1) of section 737.404, Florida Statutes, is amended to read:

737.404 Powers exercisable by joint trustees; liability.—

(1) Any power vested in three or more trustees may be exercised by a majority, but a trustee 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 trustee is not liable for the consequences of an action ~~act~~ in which ~~the dissenting trustee he or she~~ joins at the direction of the majority of the trustees if the dissent is ~~dissenting trustee~~ expressed ~~his or her~~ dissent in writing to the other ~~any of his or her~~ cotrustees at or before the time of the action ~~joinder~~.

Section 18. Section 737.6035, Florida Statutes, is created to read:

737.6035 Antilapse; deceased trust beneficiary; class gifts.—Unless a contrary intention appears in the inter vivos trust:

(1) If a beneficiary of an inter vivos trust who is a grandparent, or a lineal descendant of a grandparent, of the grantor:

(a) Is dead at the time of the execution of the inter vivos trust or at the termination of a trust interest created by an inter vivos trust;

(b) Fails to survive the grantor; or

(c) Is required by the inter vivos trust or by operation of law to be treated as having predeceased the grantor;

then the descendants of the trust beneficiary take per stirpes in place of the deceased beneficiary. A person who would have been a trust beneficiary under a class gift if that person had survived the grantor shall be a trust beneficiary for purposes of this section regardless of whether that person died before or after the execution of the inter vivos trust.

(2) If a trust beneficiary of an inter vivos trust who is not a grandparent, or a descendant of a grandparent, of the grantor:

(a) Is dead at the time of the execution of the inter vivos trust or at the termination of a trust interest created in an inter vivos trust;

(b) Fails to survive the grantor; or

(c) Is required by the inter vivos trust or by operation of law to be treated as having predeceased the grantor;

then the trust disposition to the trust beneficiary shall lapse unless an intention to substitute another appears in the inter vivos trust.

(3) This section shall apply to all inter vivos trusts and amendments to those trusts executed on or after the effective date of this section.

Section 19. Section 737.627, Florida Statutes, is amended to read:

737.627 Costs and attorney's fees.—

(1) In all actions for breach of fiduciary duty or challenging the proper exercise of, or failure to exercise, a trustee's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.

(2) When awarding taxable costs, including attorney's fees, under this section, the court, in its discretion, may direct payment from a party's interest, if any, in the trust or enter a judgment which may be satisfied from other property of the party, or both.

(3) This section shall apply to all proceedings described in subsection (1) commenced after the effective date of this act, without regard to the date the trust was created or the date of the settlor's death.

Section 20. Paragraph (a) of subsection (2) of section 95.031, Florida Statutes, is amended to read:

95.031 Computation of time.—Except as provided in subsection (2) and in s. 95.051 and elsewhere in these statutes, the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.

(2)(a) An action ~~founded upon~~ for fraud under s. 95.11(3), including constructive fraud, must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11(3), but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.

Section 21. The amendments to section 95.031, Florida Statutes, are remedial in nature and shall have retrospective effect.

Section 22. For the purpose of incorporating the amendment to section 731.201, Florida Statutes, in references thereto, subsection (8) of section 709.08, Florida Statutes, is reenacted to read:

709.08 Durable power of attorney.—

(8) STANDARD OF CARE.—Except as otherwise provided in paragraph (4)(e), an attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. 737.302. The attorney in fact is not liable to third parties for any act pursuant to the durable power of attorney if the act was authorized at the time. If the exercise of the power is improper, the attorney in fact is liable to interested persons as described in s. 731.201 for damage or loss resulting from a breach of fiduciary duty by the attorney in fact to the same extent as the trustee of an express trust.

Section 23. For the purpose of incorporating the amendment to section 731.201, Florida Statutes, in references thereto, subsection (1) of section 717.1243, Florida Statutes, is reenacted to read:

717.1243 Small estate accounts.—

(1) A claim for unclaimed property made by a beneficiary, as defined in s. 731.201, of a deceased owner need not be accompanied by an order of a probate court if the claimant files with the department an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid. If the owner died testate, the claim shall be accompanied by a copy of the will.

Section 24. For the purpose of incorporating the amendment to section 731.303, Florida Statutes, in references thereto, subsections (3) and (10) of section 660.46, Florida Statutes, are reenacted 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) and (2) shall apply with respect to notice of the proceedings to all persons who are then co-fiduciaries 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 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 (5), relating to notice requirements, the effect of notice, and representation of interests, shall apply to the proceedings provided for in this section.

(10) A beneficiary has received a final trust disclosure document or a limitation notice if, when the beneficiary is an adult, it is received by him or her or if, when the beneficiary is a minor or a disabled person, it is received by his or her representative as defined in s. 731.303.

Section 25. For the purpose of incorporating the amendment to section 731.303, Florida Statutes, in references thereto, section 731.302, Florida Statutes, is reenacted to read:

731.302 Waiver and consent by interested person.—Subsequent to the filing of a petition for administration, an interested person, including a guardian ad litem, administrator ad litem, guardian of the property, personal representative, trustee, or other fiduciary, or a sole holder or all co-holders of a power of revocation or a power of appointment, may waive, to the extent of that person's interest or the interest which that person represents, subject to the provisions of ss. 731.303 and 733.604, any right or notice or the filing of any document, exhibit, or schedule required to be filed and

may consent to any action or proceeding which may be required or permitted by this code.

Section 26. For the purpose of incorporating the amendment to section 731.303, Florida Statutes, in references thereto, paragraphs (d) and (e) of subsection (4) of section 737.303, Florida Statutes, are reenacted to read:

737.303 Duty to inform and account to beneficiaries.—The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. The trustee's duty to inform and account includes, but is not limited to, the following:

(4)

(d) A beneficiary or the beneficiary's representative, as defined in s. 731.303, may waive, in writing, the trustee's duty to account under paragraph (a).

(e) All rights provided a beneficiary under this section may be asserted by a legal representative or natural guardian of the beneficiary. Notice under subsection (1) and a trust accounting under paragraph (a) provided to a representative of the beneficiary as defined in s. 731.303 shall bind the beneficiary, and the trustee shall not be required to provide such notice or trust accounting to any beneficiary who would be bound by an order binding on a representative of the beneficiary under s. 731.303, if such notice or trust accounting, respectively, is provided to that representative.

Section 27. For the purpose of incorporating the amendment to section 731.303, Florida Statutes, in references thereto, subsection (4) of section 737.307, Florida Statutes, is reenacted to read:

737.307 Limitations on proceedings against trustees after beneficiary receives trust disclosure documents.—

(4) A beneficiary has received a trust disclosure document or a limitation notice if, being an adult, it is received by the beneficiary or if, being a minor, disabled person, or person who may take by virtue of the exercise or nonexercise of a power of appointment, it is received by the beneficiary's representative as defined in s. 731.303.

Section 28. For the purpose of incorporating the amendment to section 732.502, Florida Statutes, in references thereto, paragraph (a) of subsection (2) of section 382.025, Florida Statutes, is reenacted to read:

382.025 Certified copies of vital records; confidentiality; research.—

(2) OTHER RECORDS.—

(a) The department shall authorize the issuance of a certified copy of all or part of any marriage, dissolution of marriage, or death or fetal death certificate, excluding that portion which is confidential and exempt from the provisions of s. 119.07(1) as provided under s. 382.008, to any person requesting it upon receipt of a request and payment of the fee prescribed by

this section. A certification of the death or fetal death certificate which includes the confidential portions shall be issued only:

1. To the registrant's spouse or parent, or to the registrant's child, grandchild, or sibling, if of legal age, or to any person who provides a will that has been executed pursuant to s. 732.502, insurance policy, or other document that demonstrates his or her interest in the estate of the registrant, or to any person who provides documentation that he or she is acting on behalf of any of them;
2. To any agency of the state or local government or the United States for official purposes upon approval of the department; or
3. Upon order of any court of competent jurisdiction.

Section 29. For the purpose of incorporating the amendment to section 732.603, Florida Statutes, in references thereto, section 732.604, Florida Statutes, is reenacted to read:

732.604 Failure of testamentary provision.—

(1) Except as provided in s. 732.603, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

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

Section 30. For the purpose of incorporating the amendment to section 732.603, Florida Statutes, in references thereto, paragraph (a) of subsection (3) of section 732.801, Florida Statutes, is reenacted to read:

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

(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 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.

Section 31. For the purpose of incorporating the amendment to section 733.2121, Florida Statutes, in references thereto, section 733.701, Florida Statutes, is reenacted to read:

733.701 Notifying creditors.—Unless creditors' claims are otherwise barred by s. 733.710, every personal representative shall cause notice to creditors to be published and served under s. 733.2121.

Section 32. For the purpose of incorporating the amendment to section 95.031, Florida Statutes, in references thereto, section 63.182, Florida Statutes, is reenacted to read:

63.182 Statute of repose.—Notwithstanding s. 95.031 or s. 95.11 or any other statute:

(1) An action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights on any ground, including duress but excluding fraud, shall in no event be filed more than 1 year after entry of the judgment terminating parental rights.

(2) An action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights on grounds of fraud shall in no event be filed more than 2 years after entry of the judgment terminating parental rights.

Section 33. This act shall take effect upon becoming a law.

Approved by the Governor June 12, 2003.

Filed in Office Secretary of State June 12, 2003.