

House Bill No. 521

An act relating to probate; amending s. 655.935, F.S.; revising procedures relating to opening a decedent's safe-deposit box; amending s. 655.936, F.S.; revising procedures relating to delivery of a decedent's safe-deposit box by lessor; amending s. 655.937, F.S.; revising procedures relating to granting access to safe-deposit boxes leased in two or more names; amending s. 732.2135, F.S.; revising provisions relating to time of filing or withdrawing certain estate share elections; amending s. 732.402, F.S.; revising procedures relating to filing petitions for determinations of exempt property; amending s. 733.212, F.S.; revising procedures and requirements relating to notices of administration and petitions for relief; amending s. 733.6065, F.S.; revising procedures relating to the opening of a safe-deposit box leased or co-leased by decedent; providing an effective date.

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

Section 1. Section 655.935, Florida Statutes, is amended to read:

655.935 Search procedure on death of lessee.—If satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as a personal representative in a copy of a purported will produced by such person, to open and examine the contents of a safe-deposit box leased or co-leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent, to the court having probate jurisdiction in the county in which the financial institution is located;~~;~~

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions, to the person making the request for a search;~~;~~ ~~and~~

(3) Any document purporting to be an insurance policy on the life of the decedent, to the beneficiary named therein.

No other contents may be removed pursuant to this section. Access granted pursuant to this section shall not be considered the initial opening of the safe-deposit box pursuant to s. 733.6065 by a personal representative appointed by a court in this state.

Section 2. Subsections (1) and (2) of section 655.936, Florida Statutes, are 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 appointed by a court in this state, 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. A Such foreign personal representative appointed by a court of any other state 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.

Section 3. Section 655.937, Florida Statutes, is amended to read:

655.937 Access to safe-deposit boxes leased in two or more names.—

(1) Unless ~~When~~ specifically provided in the lease or rental agreement to the contrary, when covering a safe-deposit box is heretofore or hereafter rented or leased in the names of two or more lessees, ~~that access to the safe-deposit box will be granted to either lessee, or to either or the survivor,~~ access to the safe-deposit box shall be granted to:

(a) Either or any of such lessees, regardless of whether or not the other lessee or lessees or any of them are living or competent.

(b) Subject to s. 655.933, those persons named in s. 655.933.

(c) Subject to s. 655.935, those persons named in s. 655.935;~~or~~

(d)(b) Subject to s. 733.6065, the personal representative of the estate of either or any of such lessees who is deceased, or the guardian of the property of either or any of such lessees who is incapacitated;~~and,~~

(2) In all cases described in subsection (1), either such case, the provisions of s. 655.933 apply, and the signature on the safe-deposit entry or access record (or the receipt or acquittance, in the case of property or documents otherwise held for safekeeping) is a valid and sufficient release and discharge to the lessor for granting access to such safe-deposit box or for the delivery of such property or documents otherwise held for safekeeping.

(3)(2) A lessor may not be held liable for damages or penalty by reason of any access granted or delivery made pursuant to this section.

(4) The right of access by a co-lessee is separate from the rights and responsibilities of other persons who may be granted access to a safe-deposit box after the death or incapacity of another co-lessee and such right of access is not subject to the provisions of s. 655.935, s. 733.6065, or other requirements imposed upon personal representatives, guardians, or other fiduciaries.

(5) After the death of a co-lessee, the surviving co-lessee or any other person who is granted access to the safe-deposit box pursuant to this section may make a written inventory of the box which shall be conducted by the person making the request in the presence of one other person as specified in this subsection. Each person present shall verify the contents of the box by signing a copy of the inventory under penalties of perjury.

(a) If the person making the written inventory is a surviving co-lessee, the other person may be any other person granted access pursuant to this section, an employee of the institution at which the box is located, or an attorney licensed in this state.

(b) If the person making the written inventory is not a surviving co-lessee, the other person may be a surviving co-lessee, an employee of the institution at which the box is located, or an attorney licensed in this state.

Section 4. Subsections (1) and (3) of section 732.2135, Florida Statutes, are amended to read:

732.2135 Time of election; extensions; withdrawal.—

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

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election on or before the earlier of the date that is at any time within 8 months after the date of the decedent's death or the date of a court 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.

Section 5. Subsection (6) of section 732.402, Florida Statutes, is amended to read:

732.402 Exempt property.—

(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 on or before the later of the date that is within 4 months after the date

of service of the notice of administration or ~~the date that is within~~ 40 days ~~after 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.

Section 6. 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:

(a) The decedent's surviving spouse;

(b) Beneficiaries;

(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

(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:

(a) 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,⁵

(b) The name and address of the personal representative, and the name and address of the personal representative's attorney.

(c) ~~The notice shall state~~ That any interested person ~~persons are required to file with the court any objection by an interested person on whom a copy of the notice of administration is the notice was served must file on or before the date that is 3 months after the date of service of a copy of the notice of administration on that person any objection that challenges the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court within 3 months after the date of service of a copy of the notice of administration on the objecting person.~~

(d) That persons who may be entitled to exempt property under s. 732.402 will be deemed to have waived their rights to claim that property as exempt property unless a petition for determination of exempt property is filed by such persons or on their behalf on or before the later of the date that is 4 months after the date of service of a copy of the notice of administration on such persons or the date that is 40 days after 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 exempt property.

(e) That an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(3) Any interested person on whom a copy of the notice of administration ~~is~~ was served must object to the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 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.

(4) 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.

~~(5)~~(4) The personal representative is not individually liable to any person for giving notice under this section, regardless of whether it is later determined that notice was not required by this section. The service of notice in accordance with this section shall not be construed as conferring any right.

~~(6)~~(5) 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.

~~(7)~~(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.

(8) For the purpose of determining deadlines established by reference to the date of service of a copy of the notice of administration in cases in which such service has been waived, service shall be deemed to occur on the date the waiver is filed.

Section 7. Section 733.6065, Florida Statutes, is amended to read:

733.6065 Opening safe-deposit box.—

(1) Subject to the provisions of s. 655.936(2), the initial opening of a the ~~decedent's~~ safe-deposit box leased or co-leased by the decedent 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 separate from ~~in addition to~~ the rights provided for in subsection (1).

Section 8. This act shall take effect July 1, 2006.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.