

Committee Substitute for House Bill No. 599

An act relating to administration of estates; amending s. 731.201, F.S.; revising definitions; amending s. 732.108, F.S.; providing for nonapplication of certain limitations of actions provisions to certain paternity determinations; amending s. 732.2025, F.S.; revising a definition; amending s. 732.2045, F.S.; expanding an exclusion from application of certain provisions of law; amending s. 732.2075, F.S.; revising provisions for satisfaction of an elective share; providing additional requirements; amending s. 732.2085, F.S.; correcting a cross-reference; amending s. 732.2135, F.S.; revising criteria for time of an election; providing for award of attorney fees and costs for elections made in bad faith; amending s. 732.402, F.S.; revising criteria for certain household items, motor vehicles, and tuition programs as exempt property; amending s. 733.201, F.S.; revising a criterion for proof of wills to conform; amending s. 733.504, F.S.; revising a criterion for removal of a personal representative to conform; amending s. 733.602, F.S.; removing a cross-reference; amending s. 735.203, F.S.; revising requirements for a petition for summary administration; amending s. 739.102, F.S.; revising a definition; amending s. 739.104, F.S.; excluding from court approval certain disclaimers of interests in property; amending s. 739.201, F.S.; providing an additional rule applicable to disclaimers of interests in property; amending s. 739.207, F.S.; limiting a criterion for effectiveness of a disclaimer of power held in a fiduciary capacity; amending s. 739.402, F.S.; correcting terminology; amending s. 739.501, F.S.; preserving application of certain provisions to effectiveness of certain disclaimers or transfers; amending ss. 660.417, 736.0802, and 895.02, F.S.; correcting cross-references to conform; providing an effective date.

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

Section 1. Subsection (21) of section 731.201, Florida Statutes, is amended, subsections (25) through (39) of that section are renumbered as subsections (26) through (40), respectively, and a new subsection (25) is added to that section, 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 736, 738, 739, and 744, the term:

(21) “Incapacitated” ~~“Incompetent”~~ means a judicial determination that a person lacks the capacity to manage at least some of the person’s property or to meet at least some of the person’s essential health and safety requirements. A minor shall be treated as being incapacitated or a person adjudicated incompetent.

(25) “Minor” means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

Section 2. Paragraph (b) of subsection (2) of section 732.108, Florida Statutes, is amended to read:

732.108 Adopted persons and persons born out of wedlock.—

(2) For the purpose of intestate succession in cases not covered by subsection (1), a person born out of wedlock is a descendant of his or her mother and is one of the natural kindred of all members of the mother's family. The person is also a descendant of his or her father and is one of the natural kindred of all members of the father's family, if:

(b) The paternity of the father is established by an adjudication before or after the death of the father. Chapter 95 shall not apply in determining heirs in a probate proceeding under this paragraph.

Section 3. Subsection (10) of section 732.2025, Florida Statutes, is amended to read:

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

(10) "Transfer in satisfaction of the elective share" means an irrevocable transfer by the decedent during life to an elective share trust.

Section 4. Paragraph (f) of 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:

(f) The decedent's one-half of the property to which ss. 732.216-732.228, or any similar provisions of law of another state, apply and real property that is community property under the laws of the jurisdiction where it is located.

Section 5. Section 732.2075, Florida Statutes, is amended to read:

732.2075 Sources from which elective share payable; abatement.—

(1) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the following are applied first to satisfy the elective share:

(a) Property interests included in the elective estate that pass or have passed to or for the benefit of the surviving spouse, including interests that are contingent upon making the election, but only to the extent that such contingent interests do not diminish other property interests that would be applied to satisfy the elective share in the absence of the contingent interests. To the extent paid to or for the benefit of the surviving spouse, the proceeds of any term or other policy of insurance on the decedent's life if, at the time of decedent's death, the policy was owned by any person other than the surviving spouse.

(b) To the extent paid to or for the benefit of the surviving spouse, amounts payable under any plan or arrangement described in s. 732.2035(7).

(c) To the extent paid to or for the benefit of the surviving spouse, the decedent's one-half of any property described in s. 732.2045(1)(f).

(d) To the extent paid to or for the benefit of the surviving spouse, the proceeds of any term or other policy of insurance on the decedent's life if, at the time of decedent's death, the policy was owned by any person other than the surviving spouse.

~~(e)~~(d) Property held for the benefit of the surviving spouse in a qualifying special needs trust.

~~(e) Property interests included in the elective estate that pass or have passed to or for the benefit of the surviving spouse, including interests that are contingent upon making the election, but only to the extent that such contingent interests do not diminish other property interests that would be applied to satisfy the elective share in the absence of the contingent interests.~~

(f) Property interests that would have satisfied the elective share under any preceding paragraph of this subsection but were disclaimed.

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one class of apportioned among the direct recipients of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(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.

~~(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 or income 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.~~

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied as follows:

(a) The remaining unsatisfied balance shall be satisfied from property described in paragraphs (1)(a) and (b) which passes or which has passed in a trust in which the surviving spouse has a beneficial interest, other than an elective share trust or a qualified special needs trust.

(b) In determining the amount of the remaining unsatisfied balance, the effect, if any, of any change caused by the operation of this subsection in the value of the spouse's beneficial interests in property described in paragraphs (1)(a) and (b) shall be taken into account, including, if necessary, further recalculations of the value of those beneficial interests.

(c) If there is more than one trust to which this subsection could apply, unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the unsatisfied balance shall be apportioned pro rata to all such trusts in proportion to the value, as determined under s. 732.2095(2)(d), of the surviving spouse's beneficial interests in the trusts.

(4) If, after the application of subsections (1), (2), and (3), the elective share is not fully satisfied, any remaining unsatisfied balance shall be satisfied from direct 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 lead interest is a protected charitable interest as defined in subsection (2) in which one or more deductible interests in charity precede some other nondeductible interest or interests in the property.

~~(5)~~⁽³⁾ The contribution required of the decedent's probate estate and revocable trusts may be made in cash or in kind. In the application of this subsection, subsections ~~(6)~~ (4) and ~~(7)~~ (5) are to be applied to charge contribution for the elective share to the beneficiaries of the probate estate and revocable trusts as if all beneficiaries were taking under a common governing instrument.

~~(6)~~⁽⁴⁾ Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, any amount to be satisfied from the decedent's probate estate, other than from property passing to an inter vivos trust, shall be paid from the assets of the probate estate in the order prescribed in s. 733.805.

~~(7)~~⁽⁵⁾ Unless otherwise provided in the trust instrument or, in the decedent's will if there is no provision in the trust instrument, any amount to be satisfied from trust property shall be paid from the assets of the trust in the order provided for claims under s. 736.05053(2) and (3). A direction in the decedent's will is effective only for revocable trusts.

Section 6. Paragraph (a) of subsection (1) of section 732.2085, Florida Statutes, is 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.

Section 7. Subsection (3) of section 732.2135, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

732.2135 Time of election; extensions; withdrawal.—

(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 or on or before the earlier of the date that is 8 months after the date of the decedent's death and before the court's or the date of a court 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.~~

(5) If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.

Section 8. Subsection (2) of section 732.402, Florida Statutes, is amended to read:

732.402 Exempt property.—

(2) Exempt property shall consist of:

(a) Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$20,000 ~~\$10,000~~ as of the date of death.

(b) Two motor vehicles as defined in s. 316.003(21), which do not, individually as to either such motor vehicle, have a gross vehicle weight in excess of 15,000 pounds, All automobiles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal motor vehicles ~~automobiles~~.

(c) All qualified tuition programs authorized by s. 529 of the Internal Revenue Code of 1986, as amended, including, but not limited to, the Florida Prepaid College Trust Fund advance payment contracts under s. 1009.98 and the Florida Prepaid College Trust Fund participation agreements under s. 1009.981 Stanley G. Tate Florida Prepaid College Program contracts purchased and Florida College Savings agreements established under part IV of chapter 1009.

(d) All benefits paid pursuant to s. 112.1915.

Section 9. 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 incapacitated ~~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 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 believes the writing exhibited to be the true last will of the decedent.

Section 10. Subsection (1) of section 733.504, Florida Statutes, is amended to read:

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

(1) Adjudication that the personal representative is incapacitated ~~of incompetency~~.

Section 11. Subsection (1) of 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 part VII of chapter 736~~. 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 by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

Section 12. 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 or person nominated as personal representative in the decedent's will offered for probate. The petition must be signed and verified by the surviving spouse, if any, and any beneficiaries except that the joinder in 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 shall be served by formal notice with the petition.

(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 verified 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) If each trustee of a trust that is a beneficiary of the estate of the deceased person is also a petitioner, each qualified beneficiary of the trust as defined in s. 736.0103 shall be served by formal notice with the petition for summary administration unless joinder in, or consent to, the petition is obtained from each qualified beneficiary of the trust. 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.~~

Section 13. Subsection (8) of section 739.102, Florida Statutes, is amended to read:

739.102 Definitions.—As used in this chapter, the term:

(8) “Insolvent” means, solely for purposes of this chapter, that the sum of a person’s debts is greater than all of the person’s assets at fair valuation and that. A person is presumed to be “insolvent” if the person is generally not paying his or her debts as they become due. For purposes of this subsection, the term “assets” has the same meaning as that provided in s. 726.102.

Section 14. Subsection (2) of section 739.104, Florida Statutes, is amended to read:

739.104 Power to disclaim; general requirements; when irrevocable.—

(2) With court approval, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, except that a disclaimer of a power arising under s. 739.201(4) does not require court approval. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the fiduciary the right to disclaim. In the absence of a court-appointed guardian, notwithstanding anything in chapter 744 to the contrary, without court approval, a natural guardian under s. 744.301 may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, which the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

Section 15. Subsection (4) is added to section 739.201, Florida Statutes, to read:

739.201 Disclaimer of interest in property.—Except for a disclaimer governed by s. 739.202, s. 739.203, or s. 739.204, the following rules apply to a disclaimer of an interest in property:

(4) In the case of a disclaimer of property over which the disclaimant has a power, in a fiduciary or nonfiduciary capacity, to direct the beneficial enjoyment of the disclaimed property, unless the disclaimer specifically provides to the contrary with reference to this subsection, the disclaimant shall also be deemed to have disclaimed that power unless the power is limited by an ascertainable standard, as defined in s. 736.0103, as in effect when the disclaimer becomes irrevocable.

Section 16. Subsection (3) of section 739.207, Florida Statutes, is amended to read:

739.207 Disclaimer of power held in fiduciary capacity.—

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting, except that a disclaimer of a fiduciary power arising under s. 739.201(4) shall bind only the disclaiming fiduciary.

Section 17. Subsection (2) of section 739.402, Florida Statutes, is amended to read:

739.402 When disclaimer is barred or limited.—

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) The disclaimant ~~disclaimer~~ accepts the interest sought to be disclaimed;

(b) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so;

(c) The interest sought to be disclaimed is sold pursuant to a judicial sale;
or

(d) The disclaimant is insolvent when the disclaimer becomes irrevocable.

Section 18. Section 739.501, Florida Statutes, is amended to read:

739.501 Tax-qualified disclaimer.—Notwithstanding any ~~other~~ provision of this chapter other than s. 739.402, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of s. 2518 of the Internal Revenue Code of 1986 as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

Section 19. Paragraph (b) of subsection (3) of section 660.417, Florida Statutes, is amended to read:

660.417 Investment of fiduciary funds in investment instruments; permissible activity under certain circumstances; limitations.—

(3) The fact that such bank or trust company or an affiliate of the bank or trust company owns or controls investment instruments shall not preclude the bank or trust company acting as a fiduciary from investing or reinvesting in such investment instruments, provided such investment instruments:

(b) When sold to accounts for which the bank or trust company is acting as a trustee of a trust as defined in s. 731.201~~(37)~~:

1. Are available for sale to accounts of other customers; and
2. If sold to other customers, are not sold to the trust accounts upon terms that are less favorable to the buyer than the terms upon which they are normally sold to the other customers.

Section 20. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f)1. The trustee of a trust as defined described in s. 731.201~~(37)~~ may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. “Majority of the qualified beneficiaries” means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(14)(c), at least a majority in interest of the beneficiaries described in s. 736.0103(14)(a), at least a majority in interest of the beneficiaries described in s. 736.0103(14)(b), and at least a majority in interest of the beneficiaries described in s. 736.0103(14)(c), if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(14)(c), at least a majority in interest of the beneficiaries described in s. 736.0103(14)(a) and at least a majority in interest of the beneficiaries described in s. 736.0103(14)(b), if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. “Qualified investment instrument” means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 21. Subsection (10) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(10) “Trustee” means any of the following:

(a) Any person acting as trustee pursuant to a trust established under s. 689.07 or s. 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real property in which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term “trustee” does not include any person appointed or acting as a personal representative as defined in s. 731.201(27) or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

Section 22. This act shall take effect July 1, 2009.

Approved by the Governor June 2, 2009.

Filed in Office Secretary of State June 2, 2009.