

CHAPTER 2012-109

House Bill No. 733

An act relating to probate; amending s. 731.201, F.S.; excluding real property owned in tenancy by the entirety or in joint tenancy with rights of survivorship from the definition of the term “protected homestead”; clarifying the application of amendments to s. 732.102, F.S., made by chapter 2011-183, Laws of Florida, relating to a spouse’s share of an intestate estate; amending s. 732.401, F.S.; revising the period of time during which an attorney in fact or guardian of the property of a surviving spouse may petition for approval to elect to take a one-half interest in the decedent’s homestead; specifying the minimum duration of an extension of time; creating s. 732.1081, F.S.; barring inheritance rights of a natural or adoptive parent whose parental rights have been previously terminated pursuant to law; providing for application of the act; providing effective dates.

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

Section 1. Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of 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 736, 738, 739, and 744, the term:

(33) “Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution on 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 in tenancy by the entirety or in joint tenancy with rights of survivorship as ~~tenants by the entirety~~ is not protected homestead.

Section 2. Notwithstanding section 2 or section 14 of chapter 2011-183, Laws of Florida, the amendments to section 732.102, Florida Statutes, made by section 2 of that act apply only to the estates of decedents dying on or after October 1, 2011.

Section 3. Effective July 1, 2012, and applicable only to estates of persons dying on or after July 1, 2012, section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the

surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent’s death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent’s descendants in being at the time of the decedent’s death, per stirpes.

(a) The right of election may be exercised:

1. By the surviving spouse; or

2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse’s probable lifetime.

(b) The election must be made within 6 months after the decedent’s death and during the surviving spouse’s lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent’s death and during the surviving spouse’s lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election ~~tells the time for making the election until 6 months after the decedent’s death or 30 days after the rendition of an order authorizing the election, whichever occurs last.~~

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT’S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....

COUNTY OF.....

1. The decedent,, died on On the date of the decedent's death, The decedent was married to, who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which ~~that~~ real property being in County, Florida, and described as: ...(description of homestead property)...

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the under- signed to make this election.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me this day of ...(month)...., ...(year)...., by ...(affiant)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

...(Type of Identification Produced)...

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or in joint tenancy with rights of survivorship.

Section 4. Effective July 1, 2012, and applicable only to estates of persons dying on or after July 1, 2012, section 732.1081, Florida Statutes, is created to read:

732.1081 Termination of parental rights.—For the purpose of intestate succession by a natural or adoptive parent, a natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent’s parental rights were terminated pursuant to chapter 39 prior to the death of the child, and the natural or adoptive parent shall be treated as if the parent predeceased the child.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor April 13, 2012.

Filed in Office Secretary of State April 13, 2012.