

CHAPTER 2012-148

Committee Substitute for House Bill No. 401

An act relating to effect of dissolution or annulment of marriage on certain designations; creating s. 732.703, F.S.; providing definitions; providing that a designation made by or on behalf of a decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse shall become void if the decedent's marriage was judicially dissolved or declared invalid before the decedent's death, if the designation was made prior to the dissolution or order; providing for disposition of assets; providing for treatment of certain retirement plans; specifying assets subject to provisions; providing exceptions; providing that payors are not liable for payments or transfers to beneficiaries contrary to this provision in certain circumstances; specifying the form of an affidavit that may be used to relieve a payor of liability for a transfer if the death certificate is silent as to the decedent's marital status at the time of death; providing that the payor is not liable for making any payment on account of, or transferring any interest in, certain types of assets to a beneficiary; providing that certain provisions apply notwithstanding the payor's knowledge that the person to whom the asset is transferred is different from the person who would own the interest due to the dissolution of the decedent's marriage or declaration of the marriage's validity before the decedent's death; providing that the provisions do not affect specified interests and rights; providing applicability; providing an effective date.

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

Section 1. Section 732.703, Florida Statutes, is created to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(1) As used in this section, unless the context requires otherwise, the term:

(a) "Asset," when not modified by other words or phrases, means an asset described in subsection (3), except as provided in paragraph (4)(j).

(b) "Beneficiary" means any person designated in a governing instrument to receive an interest in an asset upon the death of the decedent.

(c) "Death certificate" means a certified copy of a death certificate issued by an official or agency for the place where the decedent's death occurred.

(d) "Employee benefit plan" means any funded or unfunded plan, program, or fund established by an employer to provide an employee's beneficiaries with benefits that may be payable on the employee's death.

(e) “Governing instrument” means any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent.

(f) “Payor” means any person obligated to make payment of the decedent’s interest in an asset upon the death of the decedent, and any other person who is in control or possession of an asset.

(g) “Primary beneficiary” means a beneficiary designated under the governing instrument to receive an interest in an asset upon the death of the decedent who is not a secondary beneficiary. A person who receives an interest in the asset upon the death of the decedent due to the death of another beneficiary prior to the decedent’s death is also a primary beneficiary.

(h) “Secondary beneficiary” means a beneficiary designated under the governing instrument who will receive an interest in an asset if the designation of the primary beneficiary is revoked or otherwise cannot be given effect.

(2) A designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent’s former spouse is void as of the time the decedent’s marriage was judicially dissolved or declared invalid by court order prior to the decedent’s death, if the designation was made prior to the dissolution or court order. The decedent’s interest in the asset shall pass as if the decedent’s former spouse predeceased the decedent. An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986, or an employee benefit plan, may not be treated as a trust for purposes of this section.

(3) Subsection (2) applies to the following assets in which a resident of this state has an interest at the time of the resident’s death:

(a) A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan.

(b) An employee benefit plan.

(c) An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986, including an individual retirement annuity described in s. 408(b) of the Internal Revenue Code of 1986.

(d) A payable-on-death account.

(e) A security or other account registered in a transfer-on-death form.

(f) A life insurance policy, annuity, or other similar contract that is not held within an employee benefit plan or a tax-qualified retirement account.

(4) Subsection (2) does not apply:

- (a) To the extent that controlling federal law provides otherwise;
- (b) If the governing instrument is signed by the decedent, or on behalf of the decedent, after the order of dissolution or order declaring the marriage invalid and such governing instrument expressly provides that benefits will be payable to the decedent's former spouse;
- (c) To the extent a will or trust governs the disposition of the assets and s. 732.507(2) or s. 736.1005 applies;
- (d) If the order of dissolution or order declaring the marriage invalid requires that the decedent acquire or maintain the asset for the benefit of a former spouse or children of the marriage, payable upon the death of the decedent either outright or in trust, only if other assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist upon the death of the decedent;
- (e) If, under the terms of the order of dissolution or order declaring the marriage invalid, the decedent could not have unilaterally terminated or modified the ownership of the asset, or its disposition upon the death of the decedent;
- (f) If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
- (g) If the instrument directing the disposition of the asset at death is governed by the laws of a state other than this state;
- (h) To an asset held in two or more names as to which the death of one coowner vests ownership of the asset in the surviving coowner or coowners;
- (i) If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death; or
- (j) To state-administered retirement plans under chapter 121.
- (5) In the case of an asset described in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c), unless payment or transfer would violate a court order directed to, and served as required by law on, the payor:
- (a) If the governing instrument does not explicitly specify the relationship of the beneficiary to the decedent or if the governing instrument explicitly provides that the beneficiary is not the decedent's spouse, the payor is not liable for making any payment on account of, or transferring any interest in, the asset to the beneficiary.
- (b) As to any portion of the asset required by the governing instrument to be paid after the decedent's death to a primary beneficiary explicitly designated in the governing instrument as the decedent's spouse;

1. If the death certificate states that the decedent was married at the time of his or her death to that spouse, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to such primary beneficiary.

2. If the death certificate states that the decedent was not married at the time of his or her death, or if the death certificate states that the decedent was married to a person other than the spouse designated as the primary beneficiary at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to a secondary beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent’s marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the primary beneficiary upon delivery to the payor of an affidavit validly executed by the primary beneficiary in substantially the following form:

STATE OF

COUNTY OF

Before me, the undersigned authority, personally appeared ...(type or print affiant’s name)... (“Affiant”), who swore or affirmed that:

1. ...(Type or print name of decedent)... (“Decedent”) died on ...(type or print the date of the Decedent’s death)....

2. Affiant is a “primary beneficiary” as that term is defined in Section 732.703, Florida Statutes. Affiant and Decedent were married on ...(type or print the date of marriage)...., and were legally married to one another on the date of the Decedent’s death.

.....

...(Affiant)...

Sworn to or affirmed before me by the affiant who is personally known to me or who has produced ...(state type of identification)... as identification this day of ...(month)...., ...(year)....

...(Signature of Officer)...

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

4. If the death certificate is silent as to the decedent’s marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the secondary beneficiary upon delivery to the payor of an affidavit validly executed by the secondary beneficiary affidavit in substantially the following form:

STATE OF

COUNTY OF

Before me, the undersigned authority, personally appeared ...(type or print affiant’s name)... (“Affiant”), who swore or affirmed that:

1. ...(Type or print name of decedent)... (“Decedent”) died on ...(type or print the date of the Decedent’s death)....

2. Affiant is a “secondary beneficiary” as that term is defined in Section 732.703, Florida Statutes. On the date of the Decedent’s death, the Decedent was not legally married to the spouse designated as the “primary beneficiary” as that term is defined in Section 732.703, Florida Statutes.

Sworn to or affirmed before me by the affiant who is personally known to me or who has produced ...(state type of identification)... as identification this day of ...(month)...., ...(year)....

...(Signature of Officer)...

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

(6) In the case of an asset described in paragraph (3)(d), paragraph (3)(e), or paragraph (3)(f), the payor is not liable for making any payment on account of, or transferring any interest in, the asset to any beneficiary.

(7) Subsections (5) and (6) apply notwithstanding the payor’s knowledge that the person to whom the asset is transferred is different from the person who would own the interest pursuant to subsection (2).

(8) This section does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest by operation of this section, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

(9) This section applies to all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.

Section 2. This act shall take effect July 1, 2012.

Approved by the Governor April 24, 2012.

Filed in Office Secretary of State April 24, 2012.