

CHAPTER 2020-67

Committee Substitute for House Bill No. 505

An act relating to estates and trusts; creating s. 731.1065, F.S.; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; providing for retroactive application; amending s. 731.201, F.S.; revising the definition of the term “property”; amending s. 731.301, F.S.; specifying that formal notice is not sufficient to invoke a court’s personal jurisdiction over a person receiving such formal notice; providing applicability; amending s. 733.212, F.S.; revising the required contents of a notice of administration; amending s. 733.610, F.S.; expanding the list of sales or encumbrances that are voidable by interested persons under certain circumstances; amending s. 733.612, F.S.; revising the types of claims and proceedings a personal representative may properly prosecute or defend; amending s. 733.617, F.S.; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed; requiring the testator to execute a written statement that acknowledges that certain disclosures were made; providing requirements for the written statement; specifying when an attorney is deemed to have prepared or supervised the execution of a will; specifying how a person may be related to an individual; specifying when an attorney or a person related to the attorney is deemed to have been nominated in a will; providing construction; providing applicability; amending s. 736.0708, F.S.; specifying that certain attorneys and persons are not entitled to compensation for serving as a trustee unless the attorney or person is related to the settlor or unless certain disclosures are made before the trust instrument is executed; requiring a settlor to execute a written statement that acknowledges that certain disclosures were made; providing requirements for the written statement; specifying when an attorney is deemed to have prepared or supervised the execution of a trust instrument; specifying how a person may be related to an individual; specifying when an attorney or a person related to the attorney is deemed appointed in a trust instrument; providing construction; providing applicability; providing effective dates.

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

Section 1. Effective July 1, 2020, section 731.1065, Florida Statutes, is created to read:

731.1065 Precious metals.—

(1) For the purposes of the code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

(2) This section is intended to clarify existing law and applies retroactively to all written instruments executed before, on, or after July 1, 2020, as well as all proceedings pending or commenced before, on, or after July 1, 2020, in which the disposition of precious metals in any tangible form has not been finally determined.

Section 2. Subsection (32) 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:

(32) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership, including causes of action of the estate and causes of action the decedent had at the time of death.

Section 3. Effective upon this act becoming a law, subsection (2) of section 731.301, Florida Statutes, is amended to read:

731.301 Notice.—

(2) In a probate proceeding, formal notice to a person is sufficient notice for the court to exercise its in rem ~~to acquire~~ jurisdiction over the ~~person receiving formal notice to the extent of the person’s interest in the estate property~~ or in the decedent’s protected homestead. The court does not acquire personal jurisdiction over a person by service of formal notice.

Section 4. The amendment made by this act to s. 731.301, Florida Statutes, applies to all proceedings pending on or before, or commenced after, the date this act becomes a law.

Section 5. Paragraph (e) of subsection (2) of section 733.212, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(e) That, unless an extension is granted pursuant to s. 732.2135(2), 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.

(f) That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right

to contest the validity of a trust or other writing incorporated by reference into a will.

Section 6. Effective July 1, 2020, section 733.610, Florida Statutes, is amended to read:

733.610 Sale, encumbrance, or transaction involving conflict of interest. Any sale or encumbrance to the personal representative or the personal representative's spouse, agent, or attorney, or any corporation, other entity, or trust in which the personal representative, or the personal representative's spouse, agent, or attorney, has a substantial beneficial or ownership interest, or any transaction that is affected by a conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

- (1) The will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) The transaction is approved by the court after notice to interested persons.

Section 7. Subsection (20) of section 733.612, Florida Statutes, is amended to read:

733.612 Transactions authorized for the personal representative; exceptions.—Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate, of the decedent's property, and of the personal representative.

Section 8. Subsection (6) of section 733.617, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

733.617 Compensation of personal representative.—

(6) Except as otherwise provided in this section, if the personal representative is a member of The Florida Bar and has rendered legal services in connection with the administration of the estate, then in addition to a fee as personal representative, there also shall be allowed a fee for the legal services rendered.

(8)(a) An attorney serving as a personal representative, or a person related to the attorney, is not entitled to compensation for serving as a personal representative if the attorney prepared or supervised the execution of the will that nominated the attorney or person related to the attorney as personal representative, unless the attorney or person nominated is related

to the testator, or the attorney makes the following disclosures to the testator before the will is executed:

1. Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;

2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and

3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

(b)1. The testator must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the will. The written statement must be in a separate writing from the will but may be annexed to the will. The written statement may be executed before or after the execution of the will in which the attorney or related person is nominated as the personal representative.

2. The written statement must be in substantially the following form:

I, ...(Name)..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a nominated personal representative in my will or codicil dated ...(insert date)...

Before executing the will or codicil, I was informed that:

1. Subject to certain statutory limitations, most family members, regardless of their residence, and any other individuals who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative.

2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative.

3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the personal representative.

...(Signature)...

...(Testator)...

...(Insert date)...

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared or supervised the execution of a will if the preparation or supervision of the execution of the will was performed by an employee or attorney employed by the same firm as the attorney at the time the will was executed.

2. A person is “related” to an individual if, at the time the attorney prepared or supervised the execution of the will, the person is:

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

d. A relative of the individual or of the individual’s spouse with whom the attorney maintains a close, familial relationship;

e. A spouse of a person described in sub-subparagraphs b.-d.;

f. A person who cohabitates with the individual; or

g. An employee or attorney employed by the same firm as the attorney at the time the will is executed.

3. An attorney or a person related to the attorney is deemed to have been nominated in the will when the will nominates the attorney or the person related to the attorney as personal representative, co-personal representative, successor, or alternate personal representative in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to nominate the personal representative and the attorney or person related to the attorney was nominated using that power.

(d) Other than compensation payable to the personal representative, this subsection does not limit any rights or remedies that any interested person may have at law or in equity.

(e) The failure to obtain an acknowledgment from the testator under this subsection does not disqualify a personal representative from serving and does not affect the validity of a will.

(f) This subsection applies to all nominations made pursuant to a will:

1. Executed by a resident of this state on or after October 1, 2020; or

2. Republished by a resident of this state on or after October 1, 2020, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.

Section 9. Subsection (4) is added to section 736.0708, Florida Statutes, to read:

736.0708 Compensation of trustee.—

(4)(a) An attorney serving as a trustee, or a person related to such attorney, is not entitled to compensation for serving as a trustee if the attorney prepared or supervised the execution of the trust instrument that appointed the attorney or person related to the attorney as trustee, unless the attorney or person appointed is related to the settlor or the attorney makes the following disclosures to the settlor before the trust instrument is executed:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including a family member, friend, or corporate fiduciary, is eligible to serve as a trustee;

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee; and

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

(b)1. The settlor must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the trust instrument. The written statement must be in a separate writing from the trust instrument but may be annexed to the trust instrument. The written statement may be executed before or after the execution of the trust in which the attorney or related person is appointed as the trustee.

2. The written statement must be in substantially the following form:

I, ...(Name)..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a trustee in my trust instrument dated ...(insert date)....

Before executing the trust, I was informed that:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including family members, friends, and corporate fiduciaries, is eligible to serve as a trustee.

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee.

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney’s firm for legal services rendered to the trustee.

...(Signature)...

...(Settlor)...

...(Insert Date)...

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared, or supervised the execution of, a trust instrument if the preparation, or supervision of the execution, of the trust instrument was performed by an employee or attorney employed by the same firm as the attorney at the time the trust instrument was executed.

2. A person is “related” to an individual if, at the time the attorney prepared or supervised the execution of the trust instrument, the person is:

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

d. A relative of the individual or of the individual’s spouse with whom the attorney maintains a close, familial relationship;

e. A spouse of a person described in sub-subparagraphs b.-d.;

f. A person who cohabitates with the individual; or

g. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed.

3. An attorney or a person related to the attorney is deemed appointed in the trust instrument when the trust instrument appoints the attorney or the person related to the attorney as trustee, co-trustee, successor, or alternate trustee in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to appoint the trustee and the attorney or person related to the attorney was appointed using that power.

(d) Other than compensation payable to the trustee, this subsection does not limit any rights or remedies that any interested person may have at law or equity.

(e) The failure to obtain an acknowledgment from the settlor under this subsection does not disqualify a trustee from serving and does not affect the validity of a trust instrument.

(f) This subsection applies to all appointments made pursuant to a trust agreement:

1. Executed by a resident of this state on or after October 1, 2020; or
2. Amended by a resident of this state on or after October 1, 2020, if the trust agreement nominates the attorney who prepared or supervised the execution of the amendment or a person related to such attorney as trustee.

Section 10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2020.

Approved by the Governor June 20, 2020.

Filed in Office Secretary of State June 20, 2020.