

## CHAPTER 2024-238

### Committee Substitute for House Bill No. 923

An act relating to wills and estates; amending s. 28.223, F.S.; expanding the types of probate documents that must be recorded; revising a provision for incorporating a certain direction by reference; amending s. 732.217, F.S.; revising the types of property subject to the provisions of a certain act; amending s. 732.218, F.S.; revising the types of property for which there is a rebuttable presumption under a specified act; amending s. 732.219, F.S.; specifying that certain property is either included or excluded from the probate estate at the time of death; defining the term “probate estate”; authorizing specified parties to waive certain property rights; specifying how such rights may be waived; requiring such waiver include specified language; repealing s. 732.221, F.S., relating to perfection of title of personal representative or beneficiary; creating s. 732.2211, F.S.; providing that demands and disputes arising under a certain act must be determined using a specified action; requiring such action be governed by specified rules; requiring such action be filed within a certain period of time; providing construction; providing that certain parties have no duty to discover if property is subject to a specified act; providing exceptions; providing that certain rights are forfeit if specified actions are not taken; prohibiting certain parties from being held liable in specified circumstances; providing construction; repealing s. 732.223, F.S., relating to perfection of title of surviving spouses; creating s. 732.2231, F.S.; providing definitions; providing that certain parties are not liable for specified actions taken regarding property subject to a certain act; amending s. 732.225, F.S.; expanding the types of property for which there is a certain conclusive presumption; amending s. 732.702, F.S.; expanding the types of rights which may be waived by a surviving spouse; expanding the types of rights considered to be “all rights” within a waiver; amending s. 733.212, F.S.; requiring a notice of administration state that specified parties have no duty to discover if property is subject to a certain act; providing an exception; amending s. 733.2121, F.S.; requiring a notice to creditors state that specified parties have no duty to discover if property is subject to a certain act; providing an exception; amending s. 733.607, F.S.; specifying that specified parties have no rights to, and may not take possession of, certain property; providing an exception; providing effective dates.

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

Section 1. Effective January 1, 2025, subsection (1) of section 28.223, Florida Statutes, is amended to read:

28.223 Probate records; recordation.—

(1) The clerk of the circuit shall record all wills and codicils admitted to probate, orders admitting the will to probate, orders determining

beneficiaries, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. The direction may be in the order by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity.

Section 2. Section 732.217, Florida Statutes, is amended to read:

732.217 Application.—Sections 732.216-732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, except personal property held as tenants by the entirety, wherever located, which:

(a) Was acquired as, or became and remained, community property under the laws of another jurisdiction;

(b) Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or

(c) Is traceable to that community property.

(2) Real property, except real property held as tenants by the entirety and homestead property, which is located in this state, and which:

(a) Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or

(b) Is traceable to that community property.

Section 3. Subsection (2) of section 732.218, Florida Statutes, is amended to read:

732.218 Rebuttable presumptions.—In determining whether ss. 732.216-732.228 apply to specific property, the following rebuttable presumptions apply:

(2) ~~Real property located in this state, other than homestead and real property held as tenants by the entirety, and personal property wherever located acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property and title to which was taken in a form which created rights of survivorship are presumed to be property to which these sections do not apply.~~

Section 4. Section 732.219, Florida Statutes, is amended to read:

732.219 Disposition upon death; waiver.—

(1) Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse, is not property of the decedent's probate estate, and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent's probate estate decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that property is not in the elective estate. For purposes of this section, the term "probate estate" means all property wherever located, that is subject to estate administration in any state of the United States or in the District of Columbia.

(2) If not previously waived pursuant to s. 732.702, the right of a surviving spouse to assert a claim arising under ss. 732.216-732.228, to any right, title, or interest in any property held by the decedent at the time of his or her death may be waived, wholly or partly, by a written contract, agreement, or waiver, signed by the surviving spouse, or any person acting on behalf of a surviving spouse, including, but not limited to, an attorney in fact; agent; guardian of the property; or personal representative, if the written contract, agreement, or waiver includes the following or substantially similar language:

"By executing this contract, agreement, or waiver, I intend to waive my right as a surviving spouse to assert a claim to any right, title or interest in property held by the decedent at the time of the decedent's death arising under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228, Florida Statutes), wholly or partly, as provided herein."

Section 5. Section 732.221, Florida Statutes, is repealed.

Section 6. Section 732.2211, Florida Statutes, is created to read:

732.2211 Demands or disputes; statute of repose.—

(1)(a) Any demand or dispute arising, wholly or partly, under ss. 732.216-732.228, regarding any right, title, or interest in any property held by the decedent or surviving spouse at the time of the decedent's death shall be determined in an action for declaratory relief governed by the rules of civil procedure. Notwithstanding any other law, a complaint for such action must be filed within 2 years after the decedent's death or be forever barred.

(b) A action for declaratory relief instituted pursuant to this section is not a claim, as defined in s. 731.201, and is not subject to ss. 733.701-733.710.

(2) The personal representative or curator has no duty to discover whether property held by the decedent or surviving spouse at the time of the decedent's death is property to which ss. 732.216-732.228 apply, or may apply, unless a written demand is made by:

(a) The surviving spouse or a beneficiary within 6 months after service of a copy of the notice of administration on the surviving spouse or beneficiary.

(b) A creditor, except as provided in paragraph (c), within 3 months after the time of the first publication of the notice to creditors.

(c) A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or the time under paragraph (b).

(3) The rights of any interested person who fails to timely file an action for declaratory relief pursuant to this section are forfeited. The decedent's surviving spouse, personal representative or curator, or any other person or entity that at any time is in possession of any property to which ss. 732.216-732.228 apply, or may apply, shall not be subject to liability for any such forfeit rights. The decedent's personal representative or curator may distribute the assets of the decedent's estate without liability for any such forfeit rights.

(4) This section does not affect any issue or matter not arising, wholly or partly, under ss. 732.216-732.228.

Section 7. Section 732.223, Florida Statutes, is repealed.

Section 8. Section 732.2231, Florida Statutes, is created to read:

732.2231 Protection of payors and other third parties.—

(1) As used in this section the terms:

(a) "Governing instrument" has the same meaning as in s. 732.2025.

(b) "Payor" means the decedent's personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(c) "Person" has the same meaning as in s. 732.2025.

(2) A property interest is subject to property rights under ss. 732.216-732.228, however a payor or other third party is not liable for paying, distributing, or transferring such property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

Section 9. Section 732.225, Florida Statutes, is amended to read:

732.225 Acts of married persons.—Sections 732.216-732.228 do not prevent married persons from severing or altering their interests in property to which these sections apply. The reinvestment of any property to which these sections apply in real property located in this state which is or becomes real or personal property held by tenants by the entirety or homestead

property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

Section 10. Subsection (1) of section 732.702, Florida Statutes, is amended to read:

732.702 Waiver of spousal rights.—

(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, or to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act as described in ss. 732.216-732.228, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts, agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver provides to the contrary, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, or to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act as described in ss. 732.216-732.228, and preference in appointment as personal representative of an intestate estate, by the waiving party in the property of the other and a renunciation by the waiving party of all benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver.

Section 11. Paragraph (g) is added to subsection (2) of section 733.212, Florida Statutes, to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(g) That the personal representative or curator has no duty to discover whether any property held at the time of the decedent’s death by the decedent or the decedent’s surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in ss. 732.216-732.228 applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary as specified under s. 732.2211.

Section 12. Subsection (1) of section 733.2121, Florida Statutes, is amended to read:

733.2121 Notice to creditors; filing of claims.—

(1) Unless creditors' claims are otherwise barred by s. 733.710, the personal representative shall promptly publish a notice to creditors. The notice shall contain the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and address of the personal representative's attorney, and the date of first publication. The notice shall state that creditors must file claims against the estate with the court during the time periods set forth in s. 733.702, or be forever barred. The notice shall state that a personal representative or curator has no duty to discover whether any property held at the time of the decedent's death by the decedent or the decedent's surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in ss. 732.216-732.228, applies, or may apply, unless a written demand is made by a creditor as specified under s. 732.2211.

Section 13. Subsection (1) of section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it. Notwithstanding anything in this section, the personal representative has no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in ss. 732.216-732.228, applies.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 13, 2024.

Filed in Office Secretary of State June 13, 2024.