

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1421 Personal Representatives

SPONSOR(S): Civil Justice Subcommittee, Omphroy

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Jones	Luczynski
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Probate is a court-supervised process that ensures that the debts of a deceased person ("decedent") are paid in an orderly fashion and that the rightful beneficiaries, whether determined under a will or by default rules of succession, receive the property to which they are entitled. Assets subject to probate are those that were owned:

- In the decedent's sole name at death; or
- By the decedent and one or more co-owners, but which lacked a provision for automatic succession of ownership at death.

Florida has two types of probate administration: formal administration for estates of any size and summary administration for estates generally under \$75,000. Additionally, Florida has an abbreviated process for distributing small estates consisting only of personal property.

A personal representative is a court-appointed person authorized to act on behalf of a decedent's estate. Under current law, a person who is not a Florida resident may not act as a personal representative for a decedent unless the person is:

- A legally adopted child or adoptive parent of the deceased.
- In direct lineage with the deceased.
- The spouse, brother, sister, uncle, aunt, nephew, or niece of the deceased, or someone in direct lineage with one of those persons.
- The spouse of any of the above persons.

CS/HB 1421 provides that a member of the Florida Bar who is a nonresident of Florida may serve as a personal representative for an estate, even if the person does not meet any of the other criteria provided in law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probate Process in Florida

Probate is a court-supervised process for identifying and gathering the assets of a deceased person ("decedent"), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.¹ Probate proceedings are governed by the Florida Probate Code, found in chapters 731 – 735, F.S., and the Florida Probate Rules of court. The probate process ensures that the decedent's debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.

Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners, but which lacked a provision for automatic succession of ownership at death.² There are two types of probate administration in Florida: formal administration and summary administration.

Formal Administration

Any interested person³ may petition the court to begin administration of the decedent's estate.⁴ Venue is proper in the county where the decedent was domiciled.⁵ If the decedent leaves a will, the custodian of the will must deposit the original copy of the will with the clerk of the court having venue of the decedent's estate within 10 days of receiving information that the decedent died.⁶

A circuit judge presides over the probate proceedings. The judge determines whether the decedent has a valid will. The estate is administered by a personal representative who is a fiduciary appointed by the court.⁷ If the decedent has a valid will that named a person to serve as personal representative, the court appoints the person if the person is qualified to serve.⁸ If the decedent does not leave a will, the surviving spouse is given first preference to serve as personal representative.⁹ The judge issues letters of administration to authorize the personal representative to act on behalf of the decedent's estate.¹⁰

The personal representative must:¹¹

- Identify, gather, value, and safeguard the decedent's probate assets.
- Publish a notice to creditors in a local newspaper to give notice to potential claimants to file claims as required by law.
- Serve a notice of administration to provide information about the estate's administration and notice of the procedures for anyone with objections to the estate's administration.
- Conduct a diligent search to locate known or reasonably ascertainable creditors, and notify these creditors of the deadline for their claims.
- Object to improper claims and defend suits brought on such claims.

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Feb. 4, 2020).

² *Id.*

³ An "interested person" is "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved." In a proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate is deemed an interested person. See s. 731.201(23), F.S.

⁴ S. 733.202, F.S.

⁵ S. 733.101(1), F.S.

⁶ S. 732.901(1), F.S.

⁷ Ss. 731.201(28) and 733.602, F.S.

⁸ See s. 733.301 – 3101, F.S. (providing qualifications and disqualifications to serve as personal representative).

⁹ S. 733.301(1)(b), F.S.

¹⁰ S. 731.201(24), F.S.

¹¹ *Id.*; ch. 733, F.S.

- Pay valid claims.
- File tax returns and pay any taxes due.
- Employ professionals to assist in the estate's administration, such as attorneys, certified public accountants, appraisers, and investment advisers.
- Pay the estate's administration expenses.
- Pay statutorily required amounts to the decedent's surviving spouse or family.
- Distribute probate assets to beneficiaries.
- Close the estate.

The Florida Probate Code provides the order and priority of distributions from the decedent's estate. In general, the decedent's assets first pay the cost of the probate proceeding. Next, assets are:

- Used to pay the decedent's funeral expenses;
- Used to pay the decedent's outstanding debts; and
- Distributed to the decedent's beneficiaries.¹²

Creditors' claims are barred unless filed in the probate proceeding within the later of three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.¹³ The decedent's estate, personal representative, and beneficiaries are not liable for any claim or cause of action against the decedent two years after the decedent's death, regardless of whether letters of administration have been issued.¹⁴

The judge presiding over the probate proceeding considers evidence to confirm the identities of beneficiaries entitled to receive property from the estate. The decedent's surviving spouse and children may be entitled to receive assets from the decedent's probate estate, even if the decedent's will gives them nothing.¹⁵ If a decedent leaves no will, or if any part of the estate is not disposed of by the will, the decedent's property passes to his or her heirs as prescribed by default rules of intestate succession.¹⁶

Summary Probate Administration

Summary administration is an alternative to the formal administration process. Generally, it is faster and less costly than formal administration. In summary administration, no personal representative is appointed; and, therefore, no personal representative fee is required. Additionally, the shorter process can result in lower attorney's fees.

Summary administration is available only if:

- The decedent has been dead for more than two years; or
- The value of the estate subject to administration in Florida (less the value of property which is exempt from the claims of creditors) is less than \$75,000.¹⁷

Moreover, summary administration is not available if a decedent's will specifically requires formal administration.¹⁸

A beneficiary or person nominated as personal representative in the decedent's will may file a petition for summary administration.¹⁹ The petition must be signed and verified by any surviving spouse and any beneficiaries who will not receive a full distributive share under the proposed distribution.²⁰ Any other beneficiary must be served with formal notice of the petition.²¹ Once the court receives the

¹² The Florida Bar, *supra* note 1.

¹³ S. 733.702(1), F.S.

¹⁴ S. 733.710, F.S.

¹⁵ *Id.*

¹⁶ S. 732.101, F.S.; ch. 732, F.S.

¹⁷ S. 735.201(1), F.S.

¹⁸ *Id.*

¹⁹ S. 735.203(1), F.S.

²⁰ *Id.*

²¹ *Id.*

petition for summary administration and is satisfied that the estate qualifies for summary administration, the court may issue an order allowing immediate distribution of assets to the appropriate recipients.²²

Disposition of Personal Property Without Administration

Disposition of personal property without administration is another alternative to the formal administration process and is a more abbreviated process than summary administration.²³ It is available only if the decedent's probate estate consists solely of:²⁴

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of \$20,000 and two vehicles;
- Personal property exempt from creditors under the Florida Constitution, such as personal property of \$1,000 or less;²⁵ and
- Non-exempt personal property valued at less than:
 - The amount of preferred funeral expenses, and
 - The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

To initiate this abbreviated process, any interested party may file an informal application with the court.²⁶ If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may authorize the distribution of personal property to appropriate persons.²⁷

Limitations on a Nonresident Acting as Personal Representative

Under current law, a person not domiciled in Florida may not act as a personal representative for a decedent unless the person is:

- A legally adopted child or adoptive parent of the deceased.
- Related by lineal consanguinity²⁸ to the deceased.
- The spouse, brother, sister, uncle, aunt, nephew, or niece of the deceased, or someone related by lineal consanguinity to one of those persons.
- The spouse of any of the above persons.²⁹

Florida Bar Membership

Under the Florida Constitution, the Florida Supreme Court has exclusive jurisdiction over the regulation of the admission of persons to the Florida Bar, and over discipline of Florida Bar members.³⁰ To implement this authority, the Court has adopted the Rules Regulating the Florida Bar, which include, among other rules and procedures:

- Procedures for applying and being admitted to the Florida Bar.³¹
- Rules of Professional Conduct.³²
- Rules Regulating Trust Accounts.³³
- Rules of Discipline.³⁴

²² S. 735.206(3), F.S.

²³ See s. 735.301, F.S.

²⁴ S. 735.301(1), F.S.

²⁵ Art. X, s. 4(a)(2), Fla. Const.

²⁶ S. 735.301(2), F.S.

²⁷ *Id.*

²⁸ Two persons related by lineal consanguinity are directly descended or ascended from one another. Examples include a mother and daughter, a great-grandfather and grandson, etc. *Black's Law Dictionary* 322 (8th. Ed. 2004).

²⁹ S. 733.304, F.S.

³⁰ Art. V, s. 15, Fla. Const.

³¹ Fla. Bar Admission Rules.

³² R. Regulating Fla. Bar ch. 4.

³³ R. Regulating Fla. Bar ch. 5.

³⁴ R. Regulating Fla. Bar ch. 3.

Part of the Supreme Court's authority is its jurisdiction to regulate all members of the Florida Bar. The Supreme Court may admonish, reprimand, suspend, or disbar any member of the Florida Bar for misconduct.³⁵

Effect of Proposed Changes

CS/HB 1421 provides that a member of the Florida Bar who is a nonresident of Florida may serve as a personal representative for a decedent's estate, in addition to the other nonresidents allowed to serve as personal representative under s. 733.304, F.S.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 733.304, F.S., relating to nonresidents.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

³⁵ See Fla. Standards for Imposing Lawyer Sanctions.
STORAGE NAME: h1421a.CJS
DATE: 2/6/2020

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 733.304, F.S., distinguishes between Florida residents and nonresidents for purposes of eligibility to serve as a personal representative. This distinction was the basis for a constitutional challenge in 1980, with petitioners arguing that s. 733.304, F.S., violated their rights protected under the U.S. Constitution's equal protection, due process, and privileges and immunities clauses.³⁶ The Florida Supreme Court rejected these constitutional challenges,³⁷ and the U.S. Supreme Court, by a divided vote, dismissed the case for lack of a substantial federal question.³⁸

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that the bill's expansion to allow an out-of-state member of the Florida Bar to serve as a personal representative does not extend to the spouse of a member of the Florida Bar.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

³⁶ See amend. XIV, s. 1, U.S. Const. (due process and equal protection clauses); art. IV, s. 2, U.S. Const. (privileges and immunities clause).

³⁷ See *In re Greenberg's Estate*, 390 So. 2d 40 (Fla. 1980).

³⁸ See *Pincus v. Estate of Greenberg*, 450 U.S. 961 (1981).