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CS/HB 923, Engrossed 1

2024 Legislature

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 2 An act relating to wills and estates; amending s.
 3 28.223, F.S.; expanding the types of probate documents
 4 that must be recorded; revising a provision for
 5 incorporating a certain direction by reference;
 6 amending s. 732.217, F.S.; revising the types of
 7 property subject to the provisions of a certain act;
 8 amending s. 732.218, F.S.; revising the types of
 9 property for which there is a rebuttable presumption
 10 under a specified act; amending s. 732.219, F.S.;
 11 specifying that certain property is either included or
 12 excluded from the probate estate at the time of death;
 13 defining the term "probate estate"; authorizing
 14 specified parties to waive certain property rights;
 15 specifying how such rights may be waived; requiring
 16 such waiver include specified language; repealing s.
 17 732.221, F.S., relating to perfection of title of
 18 personal representative or beneficiary; creating s.
 19 732.2211, F.S.; providing that demands and disputes
 20 arising under a certain act must be determined using a
 21 specified action; requiring such action be governed by
 22 specified rules; requiring such action be filed within
 23 a certain period of time; providing construction;
 24 providing that certain parties have no duty to
 25 discover if property is subject to a specified act;

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26 providing exceptions; providing that certain rights
 27 are forfeit if specified actions are not taken;
 28 prohibiting certain parties from being held liable in
 29 specified circumstances; providing construction;
 30 repealing s. 732.223, F.S., relating to perfection of
 31 title of surviving spouses; creating s. 732.2231,
 32 F.S.; providing definitions; providing that certain
 33 parties are not liable for specified actions taken
 34 regarding property subject to a certain act; amending
 35 s. 732.225, F.S.; expanding the types of property for
 36 which there is a certain conclusive presumption;
 37 amending s. 732.702, F.S.; expanding the types of
 38 rights which may be waived by a surviving spouse;
 39 expanding the types of rights considered to be "all
 40 rights" within a waiver; amending s. 733.212, F.S.;
 41 requiring a notice of administration state that
 42 specified parties have no duty to discover if property
 43 is subject to a certain act; providing an exception;
 44 amending s. 733.2121, F.S.; requiring a notice to
 45 creditors state that specified parties have no duty to
 46 discover if property is subject to a certain act;
 47 providing an exception; amending s. 733.607, F.S.;
 48 specifying that specified parties have no rights to,
 49 and may not take possession of, certain property;
 50 providing an exception; providing effective dates.

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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:

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

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

80 (c) Is traceable to that community property.

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

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

88 (b) Is traceable to that community property.

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

91 732.218 Rebuttable presumptions.—In determining whether
92 ss. 732.216–732.228 apply to specific property, the following
93 rebuttable presumptions apply:

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

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101 apply.

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

104 732.219 Disposition upon death; waiver.—

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

118 (2) If not previously waived pursuant to s. 732.702, the
119 right of a surviving spouse to assert a claim arising under ss.
120 732.216-732.228, to any right, title, or interest in any
121 property held by the decedent at the time of his or her death
122 may be waived, wholly or partly, by a written contract,
123 agreement, or waiver, signed by the surviving spouse, or any
124 person acting on behalf of a surviving spouse, including, but
125 not limited to, an attorney in fact; agent; guardian of the

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126 property; or personal representative, if the written contract,
 127 agreement, or waiver includes the following or substantially
 128 similar language:

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

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

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

139 732.2211 Demands or disputes; statute of repose.—

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

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

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

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

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

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

165 (3) The rights of any interested person who fails to
166 timely file an action for declaratory relief pursuant to this
167 section are forfeited. The decedent's surviving spouse, personal
168 representative or curator, or any other person or entity that at
169 any time is in possession of any property to which ss. 732.216-
170 732.228 apply, or may apply, shall not be subject to liability
171 for any such forfeit rights. The decedent's personal
172 representative or curator may distribute the assets of the
173 decedent's estate without liability for any such forfeit rights.

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

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

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

179 732.2231 Protection of payors and other third parties.—

180 (1) As used in this section the terms:

181 (a) "Governing instrument" has the same meaning as in s.
182 732.2025.

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

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

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

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

197 732.225 Acts of married persons.—Sections 732.216-732.228
198 do not prevent married persons from severing or altering their
199 interests in property to which these sections apply. The
200 reinvestment of any property to which these sections apply in

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201 real property located in this state which is or becomes real or
 202 personal property held by tenants by the entirety or homestead
 203 property creates a conclusive presumption that the spouses have
 204 agreed to terminate the community property attribute of the
 205 property reinvested.

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

208 732.702 Waiver of spousal rights.—

209 (1) The rights of a surviving spouse to an elective share,
 210 intestate share, pretermitted share, homestead, exempt property,
 211 family allowance, or to assert a claim under the Florida Uniform
 212 Disposition of Community Property Rights at Death Act as
 213 described in ss. 732.216-732.228, and preference in appointment
 214 as personal representative of an intestate estate or any of
 215 those rights, may be waived, wholly or partly, before or after
 216 marriage, by a written contract, agreement, or waiver, signed by
 217 the waiving party in the presence of two subscribing witnesses.
 218 The requirement of witnesses shall be applicable only to
 219 contracts, agreements, or waivers signed by Florida residents
 220 after the effective date of this law. Any contract, agreement,
 221 or waiver executed by a nonresident of Florida, either before or
 222 after this law takes effect, is valid in this state if valid
 223 when executed under the laws of the state or country where it
 224 was executed, whether or not he or she is a Florida resident at
 225 the time of death. Unless the waiver provides to the contrary, a

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226 waiver of "all rights," or equivalent language, in the property
 227 or estate of a present or prospective spouse, or a complete
 228 property settlement entered into after, or in anticipation of,
 229 separation, dissolution of marriage, or divorce, is a waiver of
 230 all rights to elective share, intestate share, pretermitted
 231 share, homestead, exempt property, family allowance, or to
 232 assert a claim under the Florida Uniform Disposition of
 233 Community Property Rights at Death Act as described in ss.
 234 732.216-732.228, and preference in appointment as personal
 235 representative of an intestate estate, by the waiving party in
 236 the property of the other and a renunciation by the waiving
 237 party of all benefits that would otherwise pass to the waiving
 238 party from the other by intestate succession or by the
 239 provisions of any will executed before the written contract,
 240 agreement, or waiver.

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

243 733.212 Notice of administration; filing of objections.-

244 (2) The notice shall state:

245 (g) That the personal representative or curator has no
 246 duty to discover whether any property held at the time of the
 247 decedent's death by the decedent or the decedent's surviving
 248 spouse is property to which the Florida Uniform Disposition of
 249 Community Property Rights at Death Act as described in ss.
 250 732.216-732.228 applies, or may apply, unless a written demand

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251 is made by the surviving spouse or a beneficiary as specified
 252 under s. 732.2211.

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

255 733.2121 Notice to creditors; filing of claims.—

256 (1) Unless creditors' claims are otherwise barred by s.
 257 733.710, the personal representative shall promptly publish a
 258 notice to creditors. The notice shall contain the name of the
 259 decedent, the file number of the estate, the designation and
 260 address of the court in which the proceedings are pending, the
 261 name and address of the personal representative, the name and
 262 address of the personal representative's attorney, and the date
 263 of first publication. The notice shall state that creditors must
 264 file claims against the estate with the court during the time
 265 periods set forth in s. 733.702, or be forever barred. The
 266 notice shall state that a personal representative or curator has
 267 no duty to discover whether any property held at the time of the
 268 decedent's death by the decedent or the decedent's surviving
 269 spouse is property to which the Florida Uniform Disposition of
 270 Community Property Rights at Death Act as described in ss.
 271 732.216-732.228, applies, or may apply, unless a written demand
 272 is made by a creditor as specified under s. 732.2211.

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

275 733.607 Possession of estate.—

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276 (1) Except as otherwise provided by a decedent's will,
277 every personal representative has a right to, and shall take
278 possession or control of, the decedent's property, except the
279 protected homestead, but any real property or tangible personal
280 property may be left with, or surrendered to, the person
281 presumptively entitled to it unless possession of the property
282 by the personal representative will be necessary for purposes of
283 administration. The request by a personal representative for
284 delivery of any property possessed by a beneficiary is
285 conclusive evidence that the possession of the property by the
286 personal representative is necessary for the purposes of
287 administration, in any action against the beneficiary for
288 possession of it. The personal representative shall take all
289 steps reasonably necessary for the management, protection, and
290 preservation of the estate until distribution and may maintain
291 an action to recover possession of property or to determine the
292 title to it. Notwithstanding anything in this section, the
293 personal representative has no right to, and shall not knowingly
294 take possession or control of, a surviving spouse's one-half
295 share of property to which the Florida Uniform Disposition of
296 Community Property Rights at Death Act as described in ss.
297 732.216-732.228, applies.

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