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CS/HB 505

2020 Legislature

1
2 An act relating to estates and trusts; creating s.
3 731.1065, F.S.; specifying that precious metals are
4 tangible personal property for the purposes of the
5 Florida Probate Code; providing for retroactive
6 application; amending s. 731.201, F.S.; revising the
7 definition of the term "property"; amending s.
8 731.301, F.S.; specifying that formal notice is not
9 sufficient to invoke a court's personal jurisdiction
10 over a person receiving such formal notice; providing
11 applicability; amending s. 733.212, F.S.; revising the
12 required contents of a notice of administration;
13 amending s. 733.610, F.S.; expanding the list of sales
14 or encumbrances that are voidable by interested
15 persons under certain circumstances; amending s.
16 733.612, F.S.; revising the types of claims and
17 proceedings a personal representative may properly
18 prosecute or defend; amending s. 733.617, F.S.;
19 specifying that certain attorneys and persons are not
20 entitled to compensation for serving as a personal
21 representative unless the attorney or person is
22 related to the testator or unless certain disclosures
23 are made before a will is executed; requiring the
24 testator to execute a written statement that
25 acknowledges that certain disclosures were made;

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26 providing requirements for the written statement;
27 specifying when an attorney is deemed to have prepared
28 or supervised the execution of a will; specifying how
29 a person may be related to an individual; specifying
30 when an attorney or a person related to the attorney
31 is deemed to have been nominated in a will; providing
32 construction; providing applicability; amending s.
33 736.0708, F.S.; specifying that certain attorneys and
34 persons are not entitled to compensation for serving
35 as a trustee unless the attorney or person is related
36 to the settlor or unless certain disclosures are made
37 before the trust instrument is executed; requiring a
38 settlor to execute a written statement that
39 acknowledges that certain disclosures were made;
40 providing requirements for the written statement;
41 specifying when an attorney is deemed to have prepared
42 or supervised the execution of a trust instrument;
43 specifying how a person may be related to an
44 individual; specifying when an attorney or a person
45 related to the attorney is deemed appointed in a trust
46 instrument; providing construction; providing
47 applicability; providing effective dates.

48
49 Be It Enacted by the Legislature of the State of Florida:
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51 Section 1. Effective July 1, 2020, section 731.1065,
52 Florida Statutes, is created to read:

53 731.1065 Precious metals.—

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

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

65 Section 2. Subsection (32) of section 731.201, Florida
66 Statutes, is amended to read:

67 731.201 General definitions.—Subject to additional
68 definitions in subsequent chapters that are applicable to
69 specific chapters or parts, and unless the context otherwise
70 requires, in this code, in s. 409.9101, and in chapters 736,
71 738, 739, and 744, the term:

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

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

79 731.301 Notice.—

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

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

89 Section 5. Paragraph (e) of subsection (2) of section
 90 733.212, Florida Statutes, is amended, and paragraph (f) is
 91 added to that subsection, to read:

92 733.212 Notice of administration; filing of objections.—

93 (2) The notice shall state:

94 (e) That, unless an extension is granted pursuant to s.
 95 732.2135(2), an election to take an elective share must be filed
 96 on or before the earlier of the date that is 6 months after the
 97 date of service of a copy of the notice of administration on the
 98 surviving spouse, or an attorney in fact or a guardian of the
 99 property of the surviving spouse, or the date that is 2 years
 100 after the date of the decedent's death.

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101 (f) That, under certain circumstances and by failing to
 102 contest the will, the recipient of the notice of administration
 103 may be waiving his or her right to contest the validity of a
 104 trust or other writing incorporated by reference into a will.

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

107 733.610 Sale, encumbrance, or transaction involving
 108 conflict of interest.—Any sale or encumbrance to the personal
 109 representative or the personal representative's spouse, agent,
 110 or attorney, or any corporation, other entity, or trust in which
 111 the personal representative, or the personal representative's
 112 spouse, agent, or attorney, has a substantial beneficial or
 113 ownership interest, or any transaction that is affected by a
 114 conflict of interest on the part of the personal representative,
 115 is voidable by any interested person except one who has
 116 consented after fair disclosure, unless:

117 (1) The will or a contract entered into by the decedent
 118 expressly authorized the transaction; or

119 (2) The transaction is approved by the court after notice
 120 to interested persons.

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

123 733.612 Transactions authorized for the personal
 124 representative; exceptions.—Except as otherwise provided by the
 125 will or court order, and subject to the priorities stated in s.

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126 733.805, without court order, a personal representative, acting
 127 reasonably for the benefit of the interested persons, may
 128 properly:

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

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

135 733.617 Compensation of personal representative.—

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

142 (8) (a) An attorney serving as a personal representative,
 143 or a person related to the attorney, is not entitled to
 144 compensation for serving as a personal representative if the
 145 attorney prepared or supervised the execution of the will that
 146 nominated the attorney or person related to the attorney as
 147 personal representative, unless the attorney or person nominated
 148 is related to the testator, or the attorney makes the following
 149 disclosures to the testator before the will is executed:

150 1. Subject to certain statutory limitations, most family

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151 members, regardless of their residence, and any other persons
152 who are residents of Florida, including friends and corporate
153 fiduciaries, are eligible to serve as a personal representative;

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

157 3. Compensation payable to the personal representative is
158 in addition to any attorney fees payable to the attorney or the
159 attorney's firm for legal services rendered to the personal
160 representative.

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

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

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

172
173 I have designated my attorney, an attorney employed in the
174 same law firm as my attorney, or a person related to my attorney
175 as a nominated personal representative in my will or codicil

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176 | dated ... (insert date)....

177 |
 178 | Before executing the will or codicil, I was informed that:

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

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

187 | 3. Compensation payable to the personal representative is
 188 | in addition to any attorney fees payable to the attorney or the
 189 | attorney's firm for legal services rendered to the personal
 190 | representative.

191 |
 192 | ... (Signature)...
 193 | ... (Testator)...
 194 | ... (Insert date)...

195 |
 196 | (c) For purposes of this subsection:

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

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201 was executed.

202 2. A person is "related" to an individual if, at the time

203 the attorney prepared or supervised the execution of the will,

204 the person is:

205 a. A spouse of the individual;

206 b. A lineal ascendant or descendant of the individual;

207 c. A sibling of the individual;

208 d. A relative of the individual or of the individual's

209 spouse with whom the attorney maintains a close, familial

210 relationship;

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

212 d.;

213 f. A person who cohabitates with the individual; or

214 g. An employee or attorney employed by the same firm as

215 the attorney at the time the will is executed.

216 3. An attorney or a person related to the attorney is

217 deemed to have been nominated in the will when the will

218 nominates the attorney or the person related to the attorney as

219 personal representative, co-personal representative, successor,

220 or alternate personal representative in the event another person

221 nominated is unable to or unwilling to serve, or provides the

222 attorney or any person related to the attorney with the power to

223 nominate the personal representative and the attorney or person

224 related to the attorney was nominated using that power.

225 (d) Other than compensation payable to the personal

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226 representative, this subsection does not limit any rights or
 227 remedies that any interested person may have at law or in
 228 equity.

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

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

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

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

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

244 736.0708 Compensation of trustee.—

245 (4) (a) An attorney serving as a trustee, or a person
 246 related to such attorney, is not entitled to compensation for
 247 servicing as a trustee if the attorney prepared or supervised the
 248 execution of the trust instrument that appointed the attorney or
 249 person related to the attorney as trustee, unless the attorney
 250 or person appointed is related to the settlor or the attorney

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251 makes the following disclosures to the settlor before the trust
 252 instrument is executed:

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

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

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

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

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

273
 274 I, ...(Name)..., declare that:
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276 I have designated my attorney, an attorney employed in the
 277 same law firm as my attorney, or a person related to my attorney
 278 as a trustee in my trust instrument dated ...(insert date)....

280 Before executing the trust, I was informed that:

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

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

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

292 ...(Signature)...

293 ...(Settlor)...

294 ...(Insert Date)...

296 (c) For purposes of this subsection:

297 1. An attorney is deemed to have prepared, or supervised
 298 the execution of, a trust instrument if the preparation, or
 299 supervision of the execution, of the trust instrument was
 300 performed by an employee or attorney employed by the same firm

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301 as the attorney at the time the trust instrument was executed.

302 2. A person is "related" to an individual if, at the time
 303 the attorney prepared or supervised the execution of the trust
 304 instrument, the person is:

305 a. A spouse of the individual;

306 b. A lineal ascendant or descendant of the individual;

307 c. A sibling of the individual;

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

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

313 f. A person who cohabitates with the individual; or

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

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

325 (d) Other than compensation payable to the trustee, this

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326 subsection does not limit any rights or remedies that any
 327 interested person may have at law or equity.

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

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

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

335 2. Amended by a resident of this state on or after October
 336 1, 2020, if the trust agreement nominates the attorney who
 337 prepared or supervised the execution of the amendment or a
 338 person related to such attorney as trustee.

339 Section 10. Except as otherwise expressly provided in this
 340 act and except for this section, which shall take effect upon
 341 this act becoming a law, this act shall take effect October 1,
 342 2020.