

TITLE XLII

ESTATES AND TRUSTS

CHAPTER 731

PROBATE CODE: GENERAL PROVISIONS

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PART I

SHORT TITLE, CONSTRUCTION

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731.005 Short title.—Chapters 731–735 shall be known and may be cited as the Florida Probate Code and herein referred to as “the code” in this act.

History.—s. 1, ch. 74–106; s. 1, ch. 75–220.

731.011 Determination of substantive rights; procedures.—The Florida Probate Code shall become effective on January 1, 1976. The substantive rights of all persons that have vested prior to January 1, 1976, shall be determined as provided in former chapters 731–737 and 744–746 as they existed prior to January 1, 1976. The procedures for the enforcement of substantive rights that have vested before January 1, 1976, shall be as provided in this code.

History.—s. 4, ch. 74–106; ss. 2, 113, ch. 75–220.

731.102 Construction against implied repeal.—This code is intended as unified coverage of its subject matter. No part of it shall be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History.—s. 1, ch. 74–106; s. 2, ch. 75–220.

731.103 Evidence as to death or status.—In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(1) An authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(2) A copy of any record or report of a governmental agency, domestic or foreign, that a person is alive, missing, detained, or, from the facts related, presumed dead is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(3) A person who is absent from the place of his last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier.

History.—s. 1, ch. 74–106; s. 2, ch. 75–220.

Note.—Created from former s. 734.34.

731.104 Verification of documents.—When verification of a document is required in this code or by rule, the document filed shall include an oath or affirmation or the following statement: “Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.” Any person who shall willfully include a false statement in the document shall be guilty of perjury and upon conviction shall be punished accordingly.

History.—s. 1, ch. 74–106; s. 2, ch. 75–220.

731.105 In rem proceeding.—Probate proceedings are in rem proceedings.

History.—s. 3, ch. 75–220.

731.106 Assets of nondomiciliaries.—

(1) For purposes of aiding the determination concerning location of assets that may be relevant in cases involving nondomiciliaries, a debt in favor of a nondomiciliary, other than one evidenced by investment or commercial paper or other instrument, is located in the county where the debtor resides or, if the debtor is a person other than an individual, at the place where the

debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is at the time of death.

(2) When a nonresident decedent who is a citizen of the United States or a citizen or subject of a foreign country provides in his will that the testamentary disposition of his tangible or intangible personal property having a situs within this state, or of his real property in this state, shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by Florida law. The court may, and in the case of a decedent who was at the time of his death a resident of a foreign country the court shall, direct the personal representative appointed in this state to make distribution directly to those designated by the decedent's will as beneficiaries of the tangible or intangible property or to the persons entitled to receive the decedent's personal estate under the laws of the decedent's domicile, as the case may be.

History.—s. 3, ch. 75-220; s. 1, ch. 77-174.

731.107 Adversary proceedings.—The rules of civil procedure shall be applied in any adversary proceeding in probate.

History.—s. 3, ch. 75-220.

731.109 Seal of the court.—For the purposes of this code, the seal of the clerk of the circuit court is the seal of the court.

History.—s. 3, ch. 75-220.

731.110 Caveat; proceedings.—

(1) If any creditor of the estate of a decedent is apprehensive that an estate, either testate or intestate, will be administered without his knowledge, or if any person other than a creditor is apprehensive that an estate may be administered, or that a will may be admitted to probate, without his knowledge, he may file a caveat with the court.

(2) No caveat shall be effective unless it contains the decedent's social security number or date of birth, if known, as an identification number, a statement of the interest of the caveator in the estate, the name and specific residence address of the caveator, and, if the caveator, other than a state agency, is a nonresident of the county, the additional name and specific residence address of some person residing in the county, or of a member of The Florida Bar residing in Florida, designated as the agent of the caveator, upon whom service may be made.

History.—s. 3, ch. 75-220; s. 2, ch. 77-87; s. 1, ch. 85-79; s. 2, ch. 92-200.

731.111 Notice to creditors.—

(1) When a notice to creditors is required, a notice shall be published once a week for 2 consecutive weeks, two publications being sufficient, in a newspaper published in the county in which the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county. Proof of publication shall be filed. The notice shall notify all persons having claims or demands against the estate to file their claims with the clerk within the time periods set forth in s. 733.702 with respect to notice of administration, or be forever barred. 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 person causing the notice to be published, and the name and address of his or her attorney, and state the date of first publication.

(2) Notwithstanding the provisions of subsection (1), the Department of Revenue is not barred from filing a claim against the estate of a decedent for taxes due under chapter 199 after the expiration of the time for filing claims provided in subsection (1), provided the department files its claim within 30 days after the service of the inventory or federal estate tax return on the department as provided in s. 198.13, whichever shall last occur. Additionally, in the event that the information contained therein is amended or supplemented, the department has the right to file its claim or amend a previously filed claim within 30 days after the service of such information.

History.—s. 3, ch. 75-220; s. 1, ch. 79-68; s. 2, ch. 82-38; s. 2, ch. 84-106; s. 1, ch. 89-340; s. 1, ch. 90-23; s. 23, ch. 93-233.

PART II

DEFINITIONS

731.201 General definitions.

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 and chapters 737, 738, and 744:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, shall mean a certified copy or a copy authenticated according to 28 U.S.C. s. 1733 or s. 1741.

(2) "Beneficiary" means heir at law, in an intestate estate, and devisee, in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after his interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, in the absence of a conflict of interest of the trust, the trustee is a beneficiary of the estate. An owner of a beneficial interest in the trust is a beneficiary of the trust and is, in the absence of a conflict of interest of the trust, not a beneficiary of the estate.

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claims" means liabilities of the decedent, whether arising in contract, tort, or otherwise, and funeral expenses. The term does not include expenses of administration or estate, inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Court" means the circuit court.

(7) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code or in the will.

(9) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee. The beneficiaries of the trust are not devisees.

(10) "Distributee" means a person who has received estate property from a personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) "Domicile" shall be a person's usual place of dwelling and shall be synonymous with "residence."

(12) "Estate" means property of a decedent that is the subject of administration.

(13) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(14) "File" means to file with the court or clerk.

(15) "Foreign personal representative" means a personal representative of another state or a foreign country.

(16) "Formal notice" means notice under s. 731.301(1).

(17) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(18) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incompetent" means a minor or a person adjudicated incompetent.

(20) "Informal notice" or "notice" means notice under s. 731.301(2).

(21) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration of the estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include an heir at law or a devisee who has received his distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(22) "Letters" means authority granted by the court to the personal representative to act on behalf of the

estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(23) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(24) "Parent" excludes any person who is only a step-parent, foster parent, or grandparent.

(25) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(26) "Petition" means a written request to the court for an order.

(27) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(28) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(29) "Residence" means a person's usual place of dwelling and is synonymous with "domicile."

(30) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, "residuary devise" or "residue" means a devise of all assets of the estate.

(31) "Security" means a security as defined in s. 517.021.

(32) "Security interest" means a security interest as defined in s. 671.201.

(33) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; personal representatives; custodial arrangements pursuant to the Florida Gifts to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(34) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(35) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of his property on or after his

death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

History.—s. 1, ch. 74-106; s. 4, ch. 75-220; s. 1, ch. 77-174; s. 2, ch. 85-79; s. 66, ch. 87-226; s. 1, ch. 88-340; s. 7, ch. 93-257; s. 6, ch. 95-401.

Note.—Repealed by s. 2, ch. 85-95.

Note.—Created from former s. 731.03.

PART III

NOTICE AND REPRESENTATION

- 731.301 Notice; method and time; proof.
 731.302 Waiver and consent by interested person.
 731.303 Representation.

731.301 Notice; method and time; proof.—

(1) FORMAL NOTICE.—

(a) When formal notice of a petition or other proceeding is required, the petitioner shall serve a copy of the petition to any interested person or his attorney, if he has appeared by attorney or requested that notice be sent to his attorney. The petition shall be served:

1. By any form of mail or by any commercial delivery service approved by the chief judge of each judicial circuit, requiring a signed receipt, as follows:

a. On his attorney of record, if any, or to the post-office address given in his demand for notice, if any;

b. On an individual, other than an incompetent, by mailing a copy to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession;

c. On an incompetent person, by mailing a copy to the incompetent, to the person having custody of the incompetent, and to any legal guardian of the incompetent, at their respective dwelling houses, usual places of abode, or regular places of business or profession;

d. On a corporation, by mailing a copy to the corporation at its last known address; or

2. As provided in chapter 48; or

3. In the circumstances provided in chapter 49, in the manner provided therein.

(b) If there is no answer served on the petitioner within 20 days from the service of the petition, the petition shall be considered *ex parte*. If an answer is served, a hearing shall be set and reasonable notice given.

(c) If service is made under subparagraph (a)2. or subparagraph (a)3., proof shall be made as provided in chapter 48 or chapter 49. If service is made by mail under subparagraph (a)1., proof shall be by a verified statement of the person mailing service who shall attach the signed receipt or other evidence satisfactory to the court that delivery was made to, or refused by, the addressee or his agent.

(d) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate.

(2) INFORMAL NOTICE.—

(a) When informal notice of a petition or other proceeding is required or permitted, it shall be served on the person or his attorney as provided in the Florida Rules of Civil Procedure relating to service of pleadings.

(b) Proof of service shall be made by filing an attorney's certificate of service or, if filed by a person who is not a member of The Florida Bar, by a verified statement.

(3) EFFECT OF NOTICE.—Persons given notice of any petition shall be bound by all orders entered on the petition.

(4) INFORMAL NOTICE REQUIRED.—Unless otherwise specifically provided, informal notice of every petition affecting property rights or interests must be given to interested persons.

History.—s. 1, ch. 74-106; s. 5, ch. 75-220; s. 3, ch. 77-87; s. 1, ch. 77-174; s. 1, ch. 83-257; s. 64, ch. 95-211.

Note.—Created from former s. 732.28.

731.302 Waiver and consent by interested person.

Subsequent to the filing of a petition for administration, an interested person, including a guardian ad litem, administrator ad litem, guardian of the property, personal representative, trustee, or other fiduciary, or a sole holder or all coholders of a power of revocation or a power of appointment, may waive, to the extent of that person's interest or the interest which that person represents, subject to the provisions of ss. 731.303 and 733.604, any right or notice or the filing of any document, exhibit, or schedule required to be filed and may consent to any action or proceeding which may be required or permitted by this code.

History.—s. 1, ch. 74-106; s. 6, ch. 75-220; s. 4, ch. 77-87; s. 267, ch. 79-400; s. 3, ch. 84-106.

Note.—Created from former s. 732.28.

731.303 Representation.—In proceedings involving estates of decedents or trusts, the following apply:

(1) Interests to be affected shall be described in pleadings that give information by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a general, special, or limited power of appointment, including one in the form of a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

(b) To the extent there is no conflict of interest between them or among the persons represented:

1. Orders binding a guardian of the property bind the ward whose estate he controls.

2. Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will, in establishing or adding to a trust, in reviewing the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties.

3. Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate, in actions or proceedings by or against the estate.

(c) An unborn or unascertained person, or a minor or any other person under a legal disability, who is not otherwise represented is bound by an order to the extent that his interest is represented by another party having the same or greater quality of interest in the proceeding.

(3) Orders binding a guardian of the person shall not bind the ward.

(4) Notice is required as follows:

(a) Notice as prescribed by s. 731.301 shall be given to every interested person, or to one who can bind the interested person as described in paragraph (2)(a) or paragraph (2)(b). Notice may be given both to the interested person and to another who can bind him.

(b) Notice is given to unborn or unascertained persons who are not represented pursuant to paragraph (2)(a) or paragraph (2)(b) by giving notice to all known persons whose interests in the proceedings are the same as, or of a greater quality than, those of the unborn or unascertained persons.

(5) If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of an incompetent person, an unborn or

unascertained person, a minor or any other person otherwise under a legal disability, or a person whose identity or address is unknown. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(6) Agreements, waivers, consents, approvals, accounts, or other statements that fully disclose the matters which are the subject of such accounts or statements and that bind the sole holder or all coholders of a general, special, or limited power of appointment, including a power of amendment or revocation to the extent that the power has not become unexercisable in fact, bind all persons to the extent that their interests, as persons who may take by virtue of the exercise or nonexercise of the power, are subject to the power.

History.—s. 1, ch. 74-106; s. 7, ch. 75-220; s. 5, ch. 77-87; s. 1, ch. 77-174; s. 1, ch. 88-217; s. 3, ch. 92-200.