

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-1255

SAMANTHA ELAINE TSUJI AND  
CRYSTAL IVY WILLIAMS,

Petitioners

vs.

L.T. Case Nos. 1D20-0901;  
2018-CA-000218

H. BART FLEET, AS THE DULY  
APPOINTED PERSONAL  
REPRESENTATIVE OF THE  
ESTATE OF THOMAS E.  
MORTON, JR., DECEASED,  
AND THE LEWIS BEAR  
COMPANY,

Respondents.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF  
APPEAL, FIRST DISTRICT, STATE OF FLORIDA

APPENDIX TO INITIAL BRIEF OF  
PETITIONERS

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed via the Florida Courts E-Filing Portal on April 4, 2022, and an electronic copy has been furnished to the following counsel of record:

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FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-901

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SAMANTHA ELAINE TSUJI and  
CRYSTAL IVY WILLIAMS,

Appellants,

v.

H. BART FLEET, as the duly  
appointed Personal  
Representative of the Estate of  
Thomas E. Morton, Jr.,  
Deceased, and THE LEWIS BEAR  
COMPANY,

Appellees.

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On appeal from the Circuit Court for Escambia County.  
Jan Shackelford, Judge.

August 4, 2021

ROWE, C.J.

Samantha Elaine Tsuji and Crystal Ivey Williams (Appellants) appeal an order granting summary judgment for The Lewis Bear Company (LBC). The trial court determined that Appellants' vicarious liability claims against LBC were time-barred because Appellants' negligence claims against the estate of LBC's deceased agent were time-barred. Finding no reversible error by the trial court, we affirm.

## I. Facts

In June 2014, Appellants were injured in a motor vehicle accident. Thomas E. Morton Jr., while he was working for LBC and driving an LBC-owned vehicle, collided with Appellants' car. Within four years of the accident, Appellants sued Morton and LBC, alleging that Morton was negligent and caused injury to Appellants. Appellants alleged that LBC was vicariously liable for Morton's actions. Not long after they sued, Appellants learned that Morton died a few weeks after the accident. Appellants moved to substitute H. Bart Fleet, as the personal representative of Morton's estate, for Morton.

LBC then moved for summary judgment, arguing that Appellants' claims were barred by sections 733.702(5) and 733.710(1), Florida Statutes (2013), of the Florida Probate Code. Those statutes require creditors to present claims against a decedent's estate within two years of the decedent's death. In support of its motion, LBC cited this Court's decision in *Buettner v. Cellular One, Inc.*, 700 So. 2d 48 (Fla. 1st DCA 1997). Appellants opposed the motion. Citing the Fourth District's decision in *Pezzi v. Brown*, 697 So. 2d 883 (Fla. 4th DCA 1997), they argued that a plaintiff may bring a cause of action against a tortfeasor's estate more than two years after the tortfeasor's death when the plaintiff seeks to recover damages only from the tortfeasor's casualty insurance. Appellants argued that their claim against Morton's estate was not barred because they were not seeking to hold the estate liable. Rather, they sought to recover damages from Morton's casualty insurer, and only up to the limits of the insurance policy.

After considering the parties' arguments and determining that *Buettner* was dispositive, the trial court entered summary judgment for LBC. The trial court found that if Appellants could not hold Morton's estate liable, LBC could not be vicariously liable for Morton's negligence. The court found that under section 733.710(1), Appellants had to file any claims against Morton's estate within two years of his death. Because Appellants sued outside the time limits in section 733.710(1), the court determined that the claims against Morton and LBC were time-barred. This timely appeal follows.

## II. Analysis

Appellants argue that the trial court erred in granting summary judgment for LBC based on its conclusions that: (1) Appellants had to sue within two years of Morton's death to recover under the casualty insurance policy; and (2) Appellants' vicarious liability suit against LBC could not proceed absent a judgment holding Morton liable. We review the trial court's grant of summary judgment de novo. *Wilson v. Jacks*, 310 So. 3d 545, 546 (Fla. 1st DCA 2021).

### *A. Section 733.710 Bars an Action Against a Decedent's Casualty Insurer if Not Filed Within Two Years of the Decedent's Death*

Florida's Probate Code serves many purposes. Chief among them is to promote the timely settlement of a decedent's estate. *See In re: Brown's Estate*, 117 So. 2d 478, 480 (Fla. 1960) ("Public policy requires that estates of decedents be speedily and finally determined. It is pursuant to this policy that statutes of non-claim have been enacted by the Legislature."); *In re Jeffries' Estate*, 181 So. 833, 837 (Fla. 1938) (explaining that the Probate Code "should be interpreted and applied so as to facilitate the settlement of estates in the interest of the public welfare, without unreasonably or unduly restricting the rights of creditors of such estates").

Chapter 733 of the Florida Probate Code covers the "Administration of Estates." Part VII of that chapter explains how "Creditors' Claims" may be presented against an estate. At issue are sections 733.702 and 733.710. Both fall under Part VII and limit the time for a creditor to present claims against an estate. Section 733.702(1) requires creditors to present most claims within three months after the first publication of the notice to creditors or within thirty days after service on a creditor. § 733.702(1), Fla. Stat. Section 733.702(2) provides that no cause of action will survive the decedent's death unless the creditor files the claim within the time set out in the statute. § 733.702(2), Fla. Stat.

As for the limitations on claims under section 733.702, there are exceptions. Subsection (4) of the statute exempts from the time limits for presenting a claim in subsection (1), "[t]o the limits of casualty insurance protection only, any proceeding to establish

liability that is protected by the casualty insurance.” § 733.702(4)(b), Fla. Stat. (2013). In other words, when a creditor files an action to establish liability of the estate and casualty insurance covers that liability, the creditor need not present its claim against the estate within the time for presenting claims under section 733.702(1). But if the creditor presents a claim that seeks recovery **beyond the limits** of the casualty insurance policy, the creditor must present the claim to the estate within time limits established in section 733.702(1).

Even so, while allowing for certain exceptions to the short time periods under section 733.702 for **presenting** claims against an estate under section subsection (1), the Legislature emphasized in subsection (5) that nothing in section 733.702 extends the limitations period set out in section 733.710. That section, which cuts off the estate’s liability for claims presented more than two years after the decedent’s death, is entitled, “Limitations on claims against estates.” Subsection (1) of the statute provides:

Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent’s estate, the personal representative, if any, nor the beneficiaries **shall be liable** for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

§ 733.710(1), Fla. Stat. (2013) (emphasis supplied).

“[S]ection 733.710 is a jurisdictional statute of nonclaim<sup>1</sup> that automatically bars untimely claims and is not subject to waiver or extension in the probate proceedings.” *May v. Illinois Nat’l Ins.*

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<sup>1</sup> Whereas statutes of limitations “bar actions by setting a time limit within which an action must be filed as measured from the accrual of the cause of action, after which time obtaining relief is barred,” statutes of repose or nonclaim “bar actions by setting a time limit within which an action must be filed as measured from a specific act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 695 (Fla. 2015) (quoting *Merkle v. Robinson*, 737 So. 2d 540, 542 n.6 (Fla. 1999)).

*Co.*, 771 So. 2d 1143, 1157 (Fla. 2000); *see also Brooks v. Fed. Land Bank of Columbia*, 143 So. 749, 753 (Fla. 1932) (“A statute of nonclaim while partaking of the nature of a statute of limitations is not wholly such. It constitutes part of the procedure of the court, the orderly, expeditious, and exact settlement of the estates of decedents, and constitutes part of the procedure which courts must observe in the settlement of estates of deceased persons. . . .”).

Under the plain language of the statute, the estate, the personal representative, and the beneficiaries of the estate are not liable for any claim or cause of action against the tortfeasor decedent unless the creditor presents the claim within two years of the death of the decedent. *See Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So. 2d 163, 168 (Fla. 4th DCA 1996) (“[T]here is no ambiguity in the words used in section 733.710. They say that, in spite of anything contained in any other statute, the estate is simply not liable on any claim filed more than 2 years after the decedent’s death.”). The purpose of section 733.710 aligns with the Probate Code’s central purpose of fostering the expeditious settlement of the estate of decedents. This goal of expediency explains why plaintiffs have four years to bring tort actions against living tortfeasors but only two years to bring the same claim against decedent tortfeasors. *Compare* § 95.11(3)(a), Fla. Stat. (2013), *with* § 733.710, Fla. Stat. (2013). Thus, to hold Morton’s estate liable for his negligence, Appellants had to file their cause of action within two years of Morton’s death.

Even so, Appellants contend that while the nonclaim statute, section 733.710, bars untimely claims against the estate, the personal representative, and the beneficiaries of the estate, the statute does not bar claims against a decedent’s casualty insurer—even when filed beyond the statute’s two-year limitations period. Appellants argue that if the Legislature intended to limit claims against a decedent’s casualty insurer, it could have included insurers among the parties not liable for claims filed beyond the two-year limit in section 733.710. We disagree. Although section 733.710(1) does not list casualty insurers among the parties who are not liable for untimely claims against an estate, an insurer cannot be liable for such claims until a creditor seeks and perfects a claim against the decedent tortfeasor through the entry of a judgment establishing the decedent’s liability.

Under Florida’s non-joinder statute, section 627.4136(1), Florida Statutes, a plaintiff may not file a “direct action” against a liability insurer without first obtaining a settlement or a verdict against the insured. See *Lexington Ins. Co. v. James*, 295 So. 3d 367, 372 (Fla. 1st DCA 2020) (explaining that, under the nonjoinder statute, an injured party has no interest in the tortfeasor’s liability policy until a court enters judgment against the insured). Thus, until a plaintiff establishes the liability of the decedent tortfeasor (through his estate) and then obtains a settlement or verdict against the insured decedent tortfeasor (through his estate), the plaintiff cannot proceed against the insurer. But to present a claim against a decedent tortfeasor and his estate, the plaintiff must present their claims against the estate within the limitations period set out in Part VII of the Probate Code. Thus, to present their claim against Morton’s estate (and ultimately hold Morton’s casualty insurer liable), Appellants had to file their claim seeking to establish the liability of Morton and his estate within two years of Morton’s death.

Our holding and construction of the relevant statutes appear to conflict with the Fourth District’s decision in *Pezzi*. There, the Fourth District construed section 733.710(1) to limit only the liability of the estate, the personal representative, and its representatives. *Id.* The Fourth District acknowledged the non-joinder statute and that “plaintiffs were prohibited from initiating a direct action against the insurer.” *Id.* at 885. The court also recognized that “the personal representative was still the proper nominal party in a lawsuit to establish liability of the decedent tortfeasor.” *Id.* Still, the Fourth District held that the nonclaim statute did not bar an action against an insurer because the limitation on liability under the statute “is specific to the decedent’s estate, the personal representative, and the beneficiaries; the limitation does not extend to the decedent’s insurance policy.” *Id.* But in reaching its holding, the Fourth District never addressed the limitation on claims expressed in section 733.702(5). And thus the *Pezzi* court did not consider whether an action seeking to hold a decedent’s casualty insurer liable up to the policy limits is barred by sections 733.702(5) and 733.702(10) if filed more than two years after the decedent’s death. We also disagree with the Fourth District’s reasoning in *Pezzi*

because until Appellants established Morton’s liability through an action against his estate, they could not establish the liability of the casualty insurer.

At the same time, we recognize that in *May*, our supreme court cited *Pezzi* with approval and observed that “the total failure to file a timely claim against an estate does not prevent a creditor from recovering up to the policy limits of a decedent’s casualty insurance.” 771 So. 2d at 1159. But that observation was dicta, “pure and simple.” See *Doherty v. Brown*, 14 So. 3d 1266, 1267 (Fla. 1st DCA 2009) (quoting *Bunn v. Bunn*, 311 So. 2d 387, 389 (Fla. 4th DCA 1975)). It was not necessary to the supreme court’s decision in answering the question certified to it by the United States Court of Appeals for the Eleventh Circuit. See *May*, 771 So. 2d at 1145; *Pedroza v. State*, 291 So. 3d 541, 547 (Fla. 2020) (“Any statement of law in a judicial opinion that is not a holding is dictum.”).<sup>2</sup> But more importantly, the *May* court, like the Fourth District in *Pezzi*, never addressed or considered section 733.702(5)’s express limitation on claims under section 733.702. For these reasons, the statements in *May* on the timeliness of claims against an estate when a claimant seeks to recover only to the limits of a decedent’s casualty insurance policy do not control the disposition of this appeal. See *Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (“It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.”).

*B. An Employer Cannot Be Vicariously Liable if Claims Against its Agent are Time-Barred*

We also reject Appellants’ argument that they could hold LBC liable for Morton’s negligence. The trial court did not err when it

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<sup>2</sup> Two justices concurred in the *May* decision, but did not join the part of the opinion addressing *Pezzi*, because that part of the opinion was “beyond th[e] Court’s jurisdiction pursuant to article V, section 3(b)(6) of the Florida Constitution”). 771 So. 2d at 1162.

concluded that because Appellants' claims against Morton's estate were time-barred, their vicarious liability claims against LBC were also time-barred. "Under the doctrine of respondeat superior, an employer may be liable for an employee's acts that are committed within the course and scope of employment." *Samiian v. Johnson*, 302 So. 3d 966, 985 (Fla. 1st DCA 2020), *reh'g denied* (Sept. 18, 2020), *review denied*, SC20-1505, 2021 WL 872300 (Fla. Mar. 9, 2021). But a plaintiff may not hold an employer liable until the employee is found to be liable. For this principle, the trial court correctly relied on *Buettner*.<sup>3</sup> There, this Court held that "Appellant's vicarious liability action against Appellees is barred by the well-settled doctrine that 'when a principal's liability rests solely on the doctrine of respondeat superior, a principal cannot be held liable if the agent is exonerated.'" *Buettner*, 700 So. 2d at 48 (quoting *Bankers Multiple Line Ins. Co. v. Farish*, 464 So. 2d 530, 532 (Fla. 1985)). That holding followed a decision of the Florida Supreme Court. *See Mallory v. O'Neil*, 69 So. 2d 313, 315 (Fla. 1954) ("[I]f the employee is not liable[,] the employer is not liable."). Thus the trial court was correct in its conclusion that LBC was not vicariously liable for Morton's negligence because the claims against Morton were time-barred.

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<sup>3</sup> Even so, the trial court incorrectly relied on *Buettner* as authority for its conclusion that Appellants' claims against Morton's estate were time-barred. Although the trial court in *Buettner* entered summary judgment for the estate of the deceased employee based on the two-year limitations period in 733.710(1), the plaintiff never appealed that portion of the summary judgment. *Id.* at 48 n.1. Thus, the *Buettner* court never addressed whether the plaintiff's claims against the deceased employee's estate were time-barred. Even so, as explained above, the trial court reached the right result when it concluded that Appellants' claims against Morton's estate were time-barred. *See Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) ("[T]he 'tipsy coachman' doctrine[ ] allows an appellate court to affirm a trial court that 'reaches the right result, but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record.'" (quoting *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999))).

In conclusion, we affirm the judgment entered in favor of LBC. We also certify conflict with the Fourth District's decision in *Pezzi v. Brown*, 697 So. 2d 883 (Fla. 4th DCA 1997).

AFFIRMED and CONFLICT CERTIFIED.

LEWIS and WINOKUR, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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No appearance for H. Bart Fleet, as the duly appointed Personal Representative of the Estate of Thomas E. Morton Jr., deceased.

## ADDENDUM

<b>Footnote No. (brief page number)</b>	<b>Quoted portion of today’s statute (2013)</b>	<b>Detail of Amendments since 1974</b>
n. 3 (at Br. 12)	“[N]o claim for damages, including...an action founded on...[a] wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding”	The phrase “filed in the probate proceeding” originates from 1989 and 2001 amendments and replaced the phrase “presented as follows.” Ch. 89-340, § 5, Laws of Fla.; Ch. 2001-226, § 146, Laws of Fla.; Ch. 74-106, § 1, at 255, Laws of Fla. The phrase “no claim for damages” resulted from 1975, 1981, and 1983 amendments. Ch. 75-220, § 84, at 554, Ch. 81-27, § 4, at 59, Laws of Fla.; Ch. 83-216, § 160, at 966, Laws of Fla. The words “actions” and “commission” in the 1974 bill were changed, respectively, by the 1988 and 1975 amendments to “an action” and “omission.” Ch. 88-340, § 6, Laws of Fla.; Ch. 75-220, § 84, at 554. The 1974 bill stated “shall be binding on an estate,” Ch. 74-106, § 1, at 255, Laws of Fla. (emphasis added), which the 1988 amendment changed to “is binding on the estate.” Ch. 88-340, § 6, Laws of Fla. (emphasis added). The 1974 bill had an “or” that the 1975 amendment struck. Ch. 75-220, § 84, at 554.
n. 4 (at Br. 12)	“No cause of action...shall survive the death of the person against whom the claim may be made...unless a claim is filed within the time	The 1974 provision’s concluding phrase was “in the manner provided in this part and within the four months,” rather than today’s wording from a 1990 amendment: “within the time periods set forth in this part.” See Ch. 90-23, § 4, Laws

	periods set forth in this part.”	of Fla. A 1990 bill also changed the word “actions” to “an action.” Ch. 90-23, § 4, Laws of Fla. A 2001 bill struck legalese (“heretofore or hereafter accruing”) and substituted “a” for “the.” Ch. 2001-226, § 146, Laws of Fla.
n. 5 (at Br. 13)	“[n]othing in this section affects or prevents”	In 1974, “affects or prevents” was succeeded by the words “the following,” which the 1975 amendment omitted. Ch. 74-106, § 1, at 255; Ch. 75-220, § 84, at 555.
n. 6 (at Br. 14).	“To the limits of casualty insurance protection only, any proceeding to establish liability that is protected by the casualty insurance.”	The 1974 bill had the following italicized language: “To the limits of casualty insurance protection only, any proceeding to establish liability <i>of the decedent or the personal representative for which he is protected by the casualty insurance.</i> ” Ch. 74-106, § 1, at 255 (§ 733.702(3)(b)). In 2001, the word “that” was substituted for the italicized language. Ch. 2001-226, § 146, Laws of Fla.

Chap. 16103  
1933

Section 5. This Act shall become a law immediately upon its passage and the approval thereof by the Governor, or upon its becoming a law without said approval.

Approved May 4, 1933.

CHAPTER 16103—(No. 246).

HOUSE BILL NO. 271

AN ACT Relating to Wills and the Probate Thereof, to Descent and Distribution of Decedents' Estates, to Dower, to the Administration of Decedents' Estates and the Practice and Procedure Relating Thereto, to County Judges and Their Jurisdiction in Probate and Administration and to Appellate Procedure Relating Thereto, to Revise and Consolidate the Law Relating to the Estates of Decedents and to Repeal All Laws and Statutes in Conflict Herewith.

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

ARTICLE I.

General Provisions

**Title.** Section 1. **SHORT TITLE.**—This Act shall be known and may be cited as The Probate Act.

**Effective date.** Section 2. **TIME OF TAKING EFFECT.**—This Act shall take effect at 12:01 o'clock A. M. Eastern Standard Time, October 1, 1933, and shall govern the estates of decedents dying thereafter; and the estates of decedents dying prior thereto shall be administered in accordance with the statutes and laws of Florida in force prior to the effective date of this Act.

**Definitions.** Section 3. **DEFINITIONS.**—The following rules and definitions shall govern in the construction of this Act and in all proceedings under this Act, unless a different meaning is apparent from the context:

ADMINISTRATION refers to the administration of estates and also to all probate proceedings; BEQUEATH means to dispose of personal property by will, but it may be used interchangeably with the word devise; BEQUEST means a gift of personal property received by the beneficiary in a will, but it may refer to real estate also; CURATOR is a person appointed by the County

Section 119. NOTICE TO CREDITORS.—All personal representatives after taking out letters testamentary or of administration shall cause a notice to be published once a week for four consecutive weeks, four publications being sufficient, in a newspaper published in the county wherein said letters shall have been granted notifying all persons having claims or demands against the estate of said decedent to file their claims in the office of the County Judge granting such letters at his office in the Court House of said county within eight calendar months from the time of the first publication of said notice. If no newspaper conforming to the requirements of law is published in the county of the administration, then such publication shall be made by posting as provided for in this Act. Proof of said publication or posting shall be filed with and recorded by the County Judge.

Section 120. FORM AND MANNER OF PRESENTING CLAIMS—LIMITATION.—No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the County Judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

Form of claims.

Section 121. AMENDMENT OF CLAIMS.—If a bona fide attempt is made to file a claim by any creditor or other claimant

Amendment.

Chap. 22888

such reports as the court may deem necessary. The conservator shall have powers and authority similar to that of the guardian of the property of an infant or incompetent and shall be considered as an officer or arm of the court.

Termination  
of Conservatorship.

Section 4. TERMINATION OF CONSERVATORSHIP.—

(1) At any time upon petition signed by the absentee, or on petition of an attorney-in-fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney-in-fact.

(2) Likewise, if at any time subsequent to the appointment of a conservator it shall appear that the absentee has died and an executor or administrator has been appointed for his estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.

Section 5. That all laws and parts of laws in conflict herewith are hereby repealed.

Section 6. That this act shall take effect immediately upon its becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 11, 1945.

CHAPTER 22889—(No. 375)

HOUSE BILL NO. 646

Chap. 22889

Probate  
Law; Claims  
Against Es-  
tates of  
Decedents.

AN ACT to Amend Section 733.16, of the 1941 Florida Statutes, Relating to Claims Against the Estates of Decedents.

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

Section 1. That Section 733.16 of the 1941 Florida Statutes be and the same is hereby amended to read as follows:

No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages shall be valid or binding upon an estate, or upon the personal representa-

tive thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the County Judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of the death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid; provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held.

Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 11, 1945.

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CHAPTER 22890—(No. 376)

HOUSE BILL NO. 733

AN ACT Amending Section 734.31, Florida Statutes, 1941, Relating to Ancillary Administration, and Authorizing the Probate, in this State, of any Probated Will and any Probated Codicils thereto a Certified Copy of which is filed in such Proceeding and Prohibiting the Sale by Ancillary Personal Representa-

Probate law;  
Ancillary Ad-  
ministration.

the personal representative may file a petition setting forth the names, residences and post office addresses, so far as known or ascertainable by diligent search and inquiry, of all persons in interest, except creditors of the decedent, and the nature of their respective interests, designating those who are believed by him to be minors or incompetents, and stating whether those so designated are under legal guardianship in this state. If the personal representative believes that there are or may be persons who have claims against or interest in the estate as next of kin or distributees, whose names are not known to him, the petition shall so state.

(2) After hearing, the court shall enter an order stating who is entitled to the property and the shares and amounts they are entitled to receive. Any personal representative who makes distribution or takes any other action pursuant to the order shall be fully protected.

(3) When it is necessary to determine who are or were the heirs or devisees, on the petition of any interested person the court may make a determination, irrespective of whether the estate of the deceased person is administered, or if administered whether the administration of the estate has been closed or the personal representative discharged.

733.106 Costs.—

(1) In all probate proceedings costs may be awarded as in chancery actions.

(2) When costs are to be paid out of the estate, the court may direct from what part of the estate they shall be paid.

(3) A personal representative of the last known will, being prima facie justified in offering a will in due form for probate, shall receive his costs and attorney's fees out of the estate even though he is unsuccessful.

733.107 Burden of proof in contests.—In all proceedings contesting the validity of a will, the burden of proof in the first instance shall be upon the proponent of the will to establish prima facie its formal execution and attestation, whereupon the burden of going forward with evidence shall shift to the contestant to establish the facts constituting the grounds upon which the probate of the will is opposed or revocation sought.

733.108 Limitations against unadministered estates.—After three years from the death of a person his estate shall not be liable on any cause of action if no letters have been taken out in Florida within the three years, or if letters have been taken out, but neither publication of notice to creditors has been made nor the claim of any creditor filed. The lien of any duly recorded mortgage or security interest and the lien of any person in possession of any personal property of the decedent, and the right to enforce them against the encumbered property shall not be impaired by this section.

733.109 Revocation of probate.—

(1) Pending the determination of any revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been made, except that no distribution

or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.

## PART 7

### CREDITORS CLAIMS

**733.701** Notice to creditors.—Every personal representative shall cause a notice to be published, according to the requirements of Section 733.211, notifying creditors of the decedent to present their claims within four (4) months after the date of the first publication of the notice or be forever barred. Notice to creditors may be combined with the notice of administration required by §733.210(1).

#### **733.702** Limitations on Presentation of Claims.—

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be binding on an estate, or on the personal representative, or on any beneficiary, unless presented as follows:

(a) Within four (4) months from the time of the first publication of the notice to creditors even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise, but the personal representative may settle in full any claim without the necessity of the claim being filed by the creditor when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided by this code and when the settlement is made within the statutory time for filing claims.

(b) Within three (3) years after the decedent's death if notice to creditors has not been published.

(2) No cause of action heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the four months.

(3) Nothing in this section affects or prevents the following:

(a) A proceeding to enforce any mortgage, security interest or other lien on property of the decedent; or

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

**733.703** Form and manner of presenting claim.—A creditor shall file with the clerk a written statement of the claim indicating its basis, the

Section 50. Sections 733.107, 733.108 and 733.108, Florida Statutes, are amended to read and s. 733.108 is transferred:

733.107 Burden of proof in contests.—In all proceedings contesting the validity of a will, the burden of proof in the first instance shall be upon the proponent of the will to establish prima facie its formal execution and attestation. ~~Thereafter whereupon the burden of going forward with evidence shall shift to the contestant shall have the burden of establishing to establish the facts constituting the grounds on upon which the probate of the will is opposed or revocation sought.~~

733.710 ~~733.108~~ Limitations against unadministered estates.—After 3 years from the death of a person his estate shall not be liable in any cause of action if no letters have been taken out in Florida within the 3 years or if letters have been taken out, but neither publication of notice to creditors has been made nor the claim of any creditor filed. The lien of any duly recorded mortgage or security interest and the lien of any person in possession of any personal property of the decedent, and the right to enforce them against the encumbered property, shall not be impaired by this section.

733.109 Revocation of probate.—

(1) Any beneficiary, including a beneficiary under a prior will, except those barred under 733.210 or 733.211, may, before final discharge of the personal representative, petition the court in which the will was admitted to probate, for revocation of probate.

(a) The petition shall state the interest of the petitioner and the grounds for revocation.

(b) The petition shall be served upon the personal representative and all interested persons by formal notice and, thereafter, proceedings shall be conducted as an adversary proceeding under the rules of civil procedure.

(2) ~~(1)~~ Pending the determination of any petition for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced ~~made~~, except that no distribution may be made to devisees in contravention of the rights of those who, but for the will, would be entitled to the property disposed of ~~thereby~~.

(3) ~~(2)~~ Revocation of probate of a will shall not affect or impair the title to the property theretofore purchased in good faith, for value, from the personal representative.

Section 51. Section 733.201, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 733.201, F. S., for present text.)

733.201 Proof of wills.—

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof.

(3) Claims based on contracts except a contract for attorney's fee entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

Section 83. Section 733.701, Florida Statutes, 1974 Supplement, is amended to read:

*(Substantial rewording of section. See 733.701, 1974 Supplement, F. S., for present text.)*

733.701 Notice to creditors.—Unless the proceedings are under Chapter 734 or 735, every personal representative shall cause notice of administration to be published as set forth in Part 2 of Chapter 733, notifying creditors of the decedent and others to present their claims within 3 months after the date of the first publication of such notice, or be forever barred.

Section 84. Sections 733.702 and 733.703, Florida Statutes, 1974 Supplement, are amended to read:

**733.702 Limitations on presentation of claims.—**

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, liquidated or unliquidated, and no ~~or~~ claim for personal property in the possession of the personal representative or for damages, including, but not limited to, actions founded on ~~upon~~ fraud or other wrongful act or omission of the decedent, shall be binding on an estate, on the personal representative or on any beneficiary, unless presented:

(a) Within ~~3~~ 4 months from the time of the first publication of the notice of administration to ~~creditors~~, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. ~~The However,~~ the personal representative may settle in full any claim without the necessity of the claim ~~claim's~~ being filed by the ~~creditor~~, when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in by this code and when the settlement is made within the statutory time for filing claims or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration to ~~creditors~~ has not been published.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or

omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the *time limited 4 months*.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

733.703 Form and manner of presenting claim.—A creditor shall file with the clerk a written statement of the claim, indicating its basis, the name and address of the creditor or his agent or attorney, and the amount claimed. The claim is presented when filed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, or ~~and~~ the due date of a claim not yet due does not invalidate the presentation made. A creditor shall deliver a copy of the claim to the clerk who shall furnish the copy to the personal representative and note the fact on the original.

Section 85. Section 733.704, Florida Statutes, 1974 Supplement, is republished for information purposes.

733.704 Amendment of claims.—If a bona fide attempt to file a claim is made by a creditor, but is defective as to form, the court may permit the amendment of the claim at any time.

Section 86. Sections 773.705 through 733.709, Florida Statutes, 1974 Supplement, are amended to read:

733.705 Payment of and objection to claims.—

(1) No personal representative shall be compelled to pay the debts of the decedent until after the expiration of ~~4 5~~ months from the *first publication of notice of administration issuance of letters*. If any person brings an action against a personal representative within the ~~4 5~~ months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment *under this code*.

(2) On or before the expiration of ~~4 5~~ months from the first publication of notice of administration ~~to creditors~~, a personal representative or other interested person may file a written objection to any claim ~~filed in the clerk's office~~. An objection filed to an unmatured claim matures it for the purpose of *bringing* an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail *to the address of the claimant as shown on the claim* or delivery to the claimant to whose claim he objects *or to his attorney of record if any*, not later than 10 days after it has been filed, and also on the personal

the personal representative, or any other person, not to exceed the aggregate of \$1,500.

(c) Class 3.--Debts and taxes with preference under federal law.

(d) Class 4.--Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him.

(e) Class 5.--Family allowance.

(f) Class 6.--Debts acquired after death by the continuation of the decedent's business, in accordance with subsection 733.612(22), but only to the extent of the assets of that business.

(g) Class 7.--All other claims, including those founded on judgment or decrees rendered against the decedent during his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

Section 36. Section 733.710, Florida Statutes, is amended to read:

733.710 Limitations against unadministered estates.--~~Three years after After-3-years-from~~ the death of a person his estate shall not be liable in any cause of action if no letters have been issued taken out in Florida within the 3-year period. ~~years--or--if--letters--have been--taken--out--but--neither--publication--of--notice--to--creditors--has been--made--nor--the--claim--of--any--creditor--filed--The--lien--of--any--duly recorded--mortgage--or--security--interest--and--the--lien--of--any--person--in possession--of--any--personal--property--of--the--decedent--and--the--right--to enforce--them--against--the--encumbered--property--shall--not--be--impaired by this--section:~~ This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

Section 37. Subsection (1) of section 733.802, Florida Statutes, is amended to read:

733.802 Proceedings for compulsory payment of devises or distributive interest.--

(1) Before final distribution, no personal representative shall be compelled:

(a) To pay a devise in money before the final settlement of his accounts.

(b) To deliver specific personal property devised, that may have come into his hands, unless the personal property is exempt personal property.

(c) To pay all or any part of a distributive share in the personal estate of a decedent.

Florida shall be entitled to act as personal representatives and curators of estates.

Section 4. Subsection (1) of section 733.702, Florida Statutes, 1980 Supplement, is amended to read:

**733.702 Limitations on presentation of claims.--**

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; and no claim for personal property in the possession of the personal representative; or no claim for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

Section 5. Section 733.703, Florida Statutes, is amended to read:

**733.703 Form and manner of presenting claim.--**A creditor shall file with the clerk a written statement of the claim, indicating its basis, the name and address of the creditor or his agent or attorney, and the amount claimed. The claim is presented when filed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the presentation made. A creditor shall deliver a copy of the claim to the clerk who shall serve furnish the copy on ~~to~~ the personal representative, in the manner provided for service of informal notice under s. 731.301(2)(a), and note the fact on the original.

Section 6. Subsection (1) of section 733.901, Florida Statutes, is amended to read:

**733.901 Distribution; final discharge.--**

(1) When a personal representative has completed administration except for distribution, he shall file a final accounting and a petition for discharge that shall contain:

(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.

Note.--Amended to improve clarity and facilitate correct interpretation. Section 721.25 was enacted by s. 1, ch. 81-172, Laws of Florida, which created chapter 721, the Florida Real Estate Time-Sharing Act. Chapter 721, including s. 721.25, relates to real estate time-sharing plan property; see s. 721.02(1), (2), providing that the purposes of chapter 721 are to give statutory recognition to real property time sharing in the state and to establish procedures for the creation, sale, and operation of time-sharing plans.

Section 160. Subsection (1) of section 733.702, Florida Statutes, is amended to read:

**733.702 Limitations on presentation of claims.--**

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and ~~er~~ no claim for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

Note.--Amended to improve clarity and facilitate correct interpretation.

Section 161. Subsection (5) of section 775.13, Florida Statutes, is amended to read:

**775.13 Registration of convicted felons, exemptions; penalties.--**

(5) The provisions of this law do ~~shall~~ not apply to any person ~~who~~:

(a) Who has had his civil rights restored;

(b) Who has received a full pardon for the offense for which convicted;

(c) Whose conviction of a felony was more than 10 years prior to the time provided for registration under the provisions of this law and who has been lawfully released from incarceration under a felony conviction and sentence for more than 5 years prior to such time for

(c)(b) The likelihood that the acceptance of the particular employment will preclude other employment by the person.

(d)(e) The fee customarily charged in the locality for similar services.

(e) The nature and value of the assets of the estate, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person.

(f) The results obtained.

~~(f)--The amount involved and the results obtained.~~

(g)(e) The time limitations imposed by the circumstances.

(h)(f) The nature and length of the professional relationship with the decedent.

(i)(g) The experience, reputation, diligence, and ability of the person performing the services.

Section 6. Paragraph (a) of subsection (1) and paragraph (c) of subsection (3) of section 733.702, Florida Statutes, are amended, subsection (3) is renumbered as subsection (4), and a new subsection (3) is added to said section, to read:

**733.702 Limitations on presentation of claims.--**

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless presented:

(a) Within 3 months after from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only in the estate administration proceeding, only after notice, and only upon grounds of fraud or estoppel. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted.

(4)(3) Nothing in this section affects or prevents:

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of 3 months after from the publication of the notice of administration as provided in paragraph (1)(a), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.

Section 7. Subsections (2) and (3) of section 733.705, Florida Statutes, are amended, and subsection (8) is added to said section, to read:

733.705 Payment of and objection to claims.--

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. An objection by an interested person to a personal representative's proof of claim shall state the particular item or items to which the interested person objects. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing an objection to any claim or may extend the time for serving the objection. The extension of time shall be granted only after notice.

(3) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future ~~and within which to file written notice of such action in the estate proceeding.~~ For good cause, the court may extend the time for filing an objection ~~to any claim or may extend the time for serving the objection, and may likewise extend the time for filing an action or proceeding, and filing notice of the action or proceeding,~~ after objection is filed. The extension of time shall be granted only after notice. No action or proceeding on the claim shall be brought against the personal representative after the time limited above, and any such claim is thereafter forever barred without any court order. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(8) An order for extension of time authorized under this section may be entered only in the estate administration proceeding.

changing limitations period; amending s. 735.206, F.S.; changing limitations period; providing effective dates.

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

Section 1. Section 731.111, Florida Statutes, is amended to read:

731.111 Notice to creditors.—

(1) When a notice to creditors is required, ~~a notice shall be published a personal representative shall publish a notice~~ 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 and in s. 733.710, 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, 3 calendar months from the time of the first publication of the notice.~~

(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) 3-month period,~~ provided the department files its claim within 30 days after the service of the inventory on the department. Additionally, in the event that an amended or supplementary inventory is prepared by the personal representative, the department has the right to file its claim or amend a previously filed claim within 30 days after the service of the amended or supplementary inventory.

Section 2. Section 733.212, Florida Statutes, 1988 Supplement, is amended to read:

733.212 Notice of administration; filing of objections and claims.—

(1) ~~The personal representative shall promptly publish a notice of administration and promptly serve a copy of the notice on the surviving spouse and all beneficiaries known to the personal representative in the manner provided for service of formal notice, unless served under s. 733.2123. He may similarly serve other heirs or devisees under a known prior will.~~ 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 and its address,~~ the name and address of the personal representative, and the name and address of the personal representative's attorney and ~~shall state the date of first publication that the publication of the notice has begun.~~ The notice shall require all interested persons to file with the court:

(a) All claims against the estate within ~~the time periods set forth in ss. 733.702 and 733.710, or be forever barred 3 months after the first publication of the notice.~~

(b) Any objection by an interested person on whom notice was served that challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court within the later of 3 months after the ~~date of the first publication of the notice or 30 days after the date of service of a copy of the notice on the objecting person.~~

(2) Publication shall be once a week for 2 consecutive weeks, two publications being sufficient, in a newspaper published in the county where 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.

(3) The personal representative shall serve a copy of the notice on the surviving spouse of the decedent and all beneficiaries known to the personal representative in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees or heirs under a known prior will.

(4)(a) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable and shall serve on those creditors a copy of the notice within 3 months after the first publication of the notice. Impracticable and extended searches are not required. Service is not required on any creditor who has filed a claim as provided in this part; a creditor whose claim has been paid in full; or a creditor whose claim is listed in a timely personal representative's proof of claim if the personal representative notified the creditor of that listing.

(b) The personal representative is not individually liable to any person for giving notice under this subsection, regardless of whether it is later determined that such notice was not required by this section. The service of notice in accordance with this subsection shall not be construed as admitting the validity or enforceability of a claim.

(c) If the personal representative in good faith fails to give notice required by this subsection, the personal representative is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(5)(3) Objections under paragraph (1)(b), by persons on whom notice was served, that are not filed within the later of 3 months after the date of first publication of the notice or 30 days after the date of service of a copy of the notice on the objecting person are forever barred.

(6) Claims under paragraph (1)(a) are barred as provided in s. 733.702.

Section 3. Subsection (1) of section 733.602, Florida Statutes, is amended to read:

733.602 General duties.—

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by s. 737.302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the authority in the will, if any, and the authority of any order in proceedings to which he is party, for the best interests of interested persons, including creditors as well as beneficiaries.

Section 4. Section 733.701, Florida Statutes, is amended to read:

733.701 Notifying creditors.—Unless the proceedings are under chapter 734 or chapter 735, every personal representative shall cause notice of administration to be published and served under section 733.212, notifying creditors of the decedent

and others to present their claims within 3 months after the date of the first publication of such notice or be forever barred.

Section 5. Subsections (1) and (3) and paragraph (c) of subsection (4) of section 733.702, Florida Statutes, 1988 Supplement, are amended, and subsection (5) is added to said section, to read:

733.702 Limitations on presentation of claims.—

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed within the later of presented:

(a) Within 3 months after the time of the first publication of the notice of administration or, as to any creditor required to be served with a copy of the notice of administration, 30 days after the date of service of such copy of the notice on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or, within 3 months after the first publication of the notice of administration, he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only in the estate administration proceeding, only after notice, and only upon grounds of fraud, or estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension or be forever barred, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

(4) Nothing in this section affects or prevents:

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of the time for filing claims 3 months after the publication of the notice of administration as provided in subsection paragraph (1)(a), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.

(5) Nothing in this section shall extend the limitations period set forth in s. 733.710.

Section 6. Section 733.703, Florida Statutes, is amended to read:

733.703 Form and manner of presenting claim.—

(1) A creditor shall file with the clerk a written statement of the claim, indicating its basis, the name and address of the creditor or his agent or attorney, and the amount claimed. The claim is presented when filed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the presentation made. A creditor shall deliver a copy of the claim to the clerk who shall serve the copy on the personal representative, in the manner provided for service of informal notice under s. 731.301(2)(a), and note the fact on the original. No additional charge may be imposed by a claimant who files a claim against the estate.

(2) A claimant whose claim is listed in a personal representative's proof of claim filed within 3 months after the first publication of the notice of administration shall be deemed to have filed a statement of the claim listed. Except as provided otherwise in this part, the claim shall be treated for all other purposes as if it had been filed by the claimant.

Section 7. Section 733.705, Florida Statutes, 1988 Supplement, is amended to read:

733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such claims pursuant to subsections (4), (5), (6), and (7) (3), (4), and (5). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 5 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. ~~An objection by an interested person to a personal representative's proof of claim shall state the particular item or items to which the interested person objects.~~ If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of

order approving execution or other process to be levied against property of the estate may be entered only in the estate administration proceeding. Claims on all judgments against a decedent shall be filed in the same manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property.

Section 9. Effective with respect to persons dying after July 1, 1989, section 733.710, Florida Statutes, is amended to read:

733.710 Limitations on claims against unadministered estates.—

(1) Notwithstanding any other provision of the code, 2 Three years after the death of a person, neither the decedent's estate, the personal representative (if any), nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section his estate shall not be liable in any cause of action if no letters have been issued in Florida within the 3-year period.

(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.

(3) This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

Section 10. Effective with respect to persons dying after July 1, 1989, subsections (1), (2), and (4) of 734.1025, Florida Statutes, are amended to read:

734.1025 Nonresident decedent's estate with property not exceeding \$25,000 in this state; determination of claims.—

(1) When a nonresident decedent leaves property in this state the value of which does not exceed \$25,000, the domiciliary personal representative of his estate may determine the question of claims in this state before the expiration of the 2 3-year period provided in s. 733.710 733.702 by filing in the circuit court of the county where any property is located an authenticated transcript of so much of the domiciliary proceedings as will show:

(a) In a testate estate, the probated will and all probated codicils of the decedent; the order admitting them to record; the letters or their equivalent; and the part of the record showing the names of the devisees and heirs of the decedent or an affidavit of the domiciliary personal representative reciting that the names are not shown or not fully disclosed by the domiciliary record and specifying the names. On presentation of the foregoing, the court shall admit the will and any codicils to probate if they comply with s. 732.502(1) or s. 732.502(2).

(b) In an intestate estate, the authenticated copy of letters of administration, or their equivalent, with the part of the record showing the names of the heirs of the decedent or an affidavit of the domiciliary personal representative supplying the names, as provided in paragraph (a). On presentation of the foregoing, the court shall order them recorded.

(2) After complying with the foregoing requirements, the domiciliary personal representative shall cause a notice to be served and published according to the requirements of s. 733.111 733.701, notifying all persons having claims or demands against the estate to file them.

(1) The personal representative shall promptly publish a notice of administration. 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, and the name and address of the personal representative's attorney and state the date of first publication. The notice shall require all interested persons to file with the court:

(a) All claims against the estate within the time periods set forth in s. ss. 733.702 and 733.710, or be forever barred.

(3) The personal representative shall serve a copy of the notice on the surviving spouse of the decedent and all beneficiaries known to the personal representative in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees ~~or heirs~~ under a known prior will or heirs.

Section 3. Section 732.507, Florida Statutes, is amended to read:

732.507 Effect of subsequent marriage, birth, or dissolution of marriage.—

(1) Neither subsequent marriage nor subsequent marriage and birth or adoption of lineal descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) Any provisions of a will executed by a married person, which provision affects the spouse of that person, shall become void upon the divorce of that person or upon the dissolution or annulment of the marriage. After the dissolution, divorce, or annulment, any such will shall be administered and construed as if the former spouse had died at the time of the dissolution, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise. All wills made by husband and wife whose marriage has been subsequently dissolved or who become divorced shall become void by means of the dissolution of marriage or divorce as the will affects the surviving divorced spouse.

Section 4. Subsection (2) of section 733.702, Florida Statutes, is amended to read:

733.702 Limitations on presentation of claims.—

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time periods set forth in this part limited.

Section 5. This act shall take effect October 1, 1990.

Approved by the Governor June 1, 1990.

Filed in Office Secretary of State June 1, 1990.

**History.**—§116, ch. 16103, 1933; CGL 1936 Supp. 5507(7); §3, ch. 22783, 1945; §1, ch. 67-482; §28, ch. 73-334.

**733.13 Commissioners.**—If a judgment for dower is made, the circuit judge shall select (unless selected by mutual agreement of the parties) and appoint as commissioners three suitable persons who are entirely disinterested and not connected with the parties either by consanguinity or by affinity. Such commissioners may employ a surveyor and shall be allowed such sum as may be deemed reasonable by the circuit judge to be paid as part of the costs of administration of the estate. They may be removed by the circuit judge for good cause shown and others appointed in their places. They shall proceed, immediately upon taking oaths faithfully and impartially to execute the trust imposed in them, to allot and set off dower. All matters of mesne profits shall be decided by the court upon the pleadings and evidence; provided, however, that when the interested parties agree to the allotment of dower, or when the assets are of such value and such a nature that dower may be allotted without the appointment of commissioners, the circuit judge may, in his discretion, dispense with such appointment and set off and allot dower.

**History.**—§117, ch. 16103, 1933; CGL 1936 Supp. 5507(8); §3, ch. 22783, 1945; §1, ch. 29714, 1955; §4, ch. 73-107; §28, ch. 73-334.

**733.14 Final Judgment.**—In all cases of assignment of dower, the circuit judge to whom application is made shall, upon hearing after notice, confirm, reject, or modify the allotment or assignment made. Such judgment shall vest in the surviving spouse a fee simple estate in the lands and the absolute ownership of the personal property allotted. The surviving spouse is entitled to writ of possession if necessary.

**History.**—§118, ch. 16103, 1933; CGL 1936 Supp. 5507(9); §3, ch. 22783, 1945; §4, ch. 29714, 1955; §4, ch. 73-107; §28, ch. 73-334.

**\*733.15 Notice to creditors.—**

(1) Every personal representative, after taking out letters testamentary or of administration, shall cause a notice to be published once a week for two consecutive weeks, two publications being sufficient, in a newspaper published in the county wherein said letters have been granted, notifying all persons having claims or demands against the estate of the decedent to file their claims in the office of the clerk of the circuit court granting such letters, at his office in the county courthouse, within four calendar months from the time of the first publication of said notice. If no newspaper conforming to the requirements of law is published in the county of the administration, then such publication shall be made by posting as provided for in this law. Proof of said publication or posting shall be filed with and recorded by the clerk of the circuit court.

(2) The amendments to this section by chapter 73-106, Laws of Florida, shall not be applicable to any estate the administration of which was commenced prior to October 1, 1973.

**History.**—§119, ch. 16103, 1933; CGL 1936 Supp. 5541(91); §3, ch. 22783, 1945; §2, ch. 61-394; §§2, 5, ch. 73-106; §28, ch. 73-334.

\*Note.—This section as amended takes effect October 1, 1973.

**733.16 Form and manner of presenting claims; limitation.—**

\*(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post-office address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the clerk of the circuit court granting letters. Any such claim or demand not so filed within four months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise. However, the personal representative may settle in full or in part any legal claim without the necessity of said claim being filed by the creditor, when the settlement has been approved by the heirs or beneficiaries adversely affected or accounted for in accountings to the court, and when the settlement is made within the statutory time for filing claims; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of the death of such person or not, unless such claim be filed in the manner and within the said four months as aforesaid;

\*(a) Provided, however, that if suit upon any such claim or demand is filed and service of process therein had upon such personal representative within four months from the time of the first publication of the notice to creditors, the claim or demand asserted by such suit shall not be impaired or affected by failure to file in the office of the clerk of the circuit court granting letters a claim or demand in manner and form as hereinabove provided, but such failure shall operate to preclude the plaintiff in such suit from recovering any suit costs or attorney's fees as an incident thereto; and the personal representative shall file in the office of the clerk of the circuit court granting letters a suggestion of the pendency of such suit and the same shall be entered on the claim docket;

\*(b) Provided further, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove

provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Any suit heretofore commenced and in which service of process was had upon the personal representative within the period hereinabove specified, and which may now be pending in any court against the personal representative of any estate which has not been finally closed, shall not be subject to attack upon the ground that the claim or demand upon which such suit is based was not made in manner and form and filed in the office of the clerk of the circuit court granting letters, as otherwise hereinabove provided.

\***(c)** Provided further that a creditor shall deliver a copy of such claims as recorded and filed to the clerk of the circuit court, who shall forthwith mail said copy to the personal representative, and note on the original such fact of mailing.

**(d)** Provided, further, no claims or demand of any kind or nature shall be impaired or affected by failure to file claim or demand as hereinabove provided, to the extent that such claim or demand is secured by any casualty insurance, surety insurance, automobile or public liability insurance, or other similar insurance, but failure to file such claim or demand as hereinabove provided shall bar the right to enforce any personal liability of the deceased against the estate except to the extent of such insurance.

**(e)** Anything contained herein to the contrary notwithstanding:

1. If any person pays any funeral expense or debt of the decedent for which no claim has been filed, or for which a claim has been improperly filed, he shall thereby acquire the payee's rights to claim and enforce payment of such debt or funeral expense against the estate of the decedent, and he may file a claim in the manner and within the period hereinabove specified, stating therein the name and address of the original creditor and the date and amount of the payment made.

2. If a personal representative pays or proposes to pay, or reimburses or proposes to reimburse another who has paid, any funeral expense or debt of the decedent for which no claim has been filed, or for which a claim has been improperly filed, and if such personal representative files a written statement so stating within the period hereinabove specified for filing claims, the funeral expense or debt with respect to which such statement has been filed and the personal representative's right to charge the estate therefor shall in all respects be treated and determined as if a claim were properly filed therefor as of the date of the filing of such statement. However, the filing of a written statement with respect to the payment of, or reimbursement for payment of, any one or more funeral expenses or debts

shall in no way obligate the personal representative to file with respect to, or pay or reimburse another who has paid, any other funeral expense or debt for which a claim has not been duly filed. The written statement contemplated under this subparagraph shall be signed by the personal representative and sworn to and for all purposes shall be considered as given under oath, but need not be executed before or acknowledged by a notary public or any other officer. If an objection is duly filed to the payment of any debt or funeral expense with respect to which the personal representative has filed a statement as herein contemplated; or if a statement refers to an obligation to the personal representative individually which was incurred prior to the decedent's death, the personal representative shall be deemed to have an interest adverse to the estate and to be a claimant against the estate within the meaning of §732.55; otherwise, the filing of such statements, including statements with reference to payments to reimburse the personal representative for sums expended by him in payment of, or reimbursement for the payment of, funeral expenses and debts and payments in accordance therewith, shall not in and of themselves be deemed to evidence such adverse interest or to cause the personal representative to be deemed to be a creditor of or claimant against the decedent's estate within the meaning of §732.55.

**(2)** Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file a claim, as provided for in subsection (1), for the share or interest in an estate to which he may be entitled. Nor shall such requirement of filing a claim apply to those items contained in §733.20(1)(a), (b), (d), (i) and (j), but it shall apply to those items contained in §733.20(1)(c), (e), (f), (g) and (h).

\***(3)** Amendments to this section by chapter 73-106, Laws of Florida, shall not be applicable to any estate the administration of which was commenced prior to October 1, 1973.

**History.**—§120, ch. 16103, 1933; CGL 1936 Supp. 5541(92); §3, ch. 22783, 1945; §1, ch. 22889, 1945; §1, ch. 23970, 1947; §1, ch. 57-194, §3, ch. 61-394; §1, ch. 63-309; §1, ch. 67-246; §1, ch. 67-490; §1, ch. 71-32; §§3, 5, ch. 73-106; §174, ch. 73-333; §28, ch. 73-334.

\***Note.**—The introductory paragraph, paragraphs (a), (b), and (c) of subsection (1) as amended, and subsection (3) as created, take effect October 1, 1973.

cf.—§733.35, Mortgages.

§§734.27-734.29, Suspension of statutes of limitations.

**733.17 Amendment of claims.**—If a bona fide attempt to file a claim is made by any creditor or other claimant but it is defective as to form, the circuit judge in his discretion may permit the amendment of such claim at any time before payment.

**History.**—§121, ch. 16103, 1933; CGL 1936 Supp. 5541(93); §3, ch. 22783, 1945; §28, ch. 73-334.

**\*733.18 Payment of and objections to claims.**—

**(1)** No personal representative shall be compelled to pay the debts of the decedent until after

personal representative may renounce the provisions before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A renunciation of the fee shall be filed with the court.

(3) No compensation shall be paid to the personal representative, attorneys, accountants, or appraisers unless, prior to payment:

(a) All persons bearing the impact of the payment have consented to the compensation in a signed writing filed in the proceeding; or

(b) The court has ordered the payment following informal notice of the petition to all persons bearing the impact of the payment.

**History.**—s. 1, ch. 74-106.

**\*Note.**—Effective July 1, 1975.

**Note.**—Created from former s. 734.01.

**\*733.618 Expenses in estate litigation.**—If any personal representative, or person nominated as personal representative, of the last known will defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.

**History.**—s. 1, ch. 74-106.

**\*Note.**—Effective July 1, 1975.

## PART VII

### CREDITORS' CLAIMS

- 733.701 Notice to creditors. (New)  
 733.702 Limitations on presentation of claims. (New)  
 733.703 Form and manner of presenting claim. (New)  
 733.704 Amendment of claims. (New)  
 733.705 Payment of and objection to claims. (New)  
 733.706 Executions and levies. (New)  
 733.707 Order of payment of expenses and claims. (New)  
 733.708 Compromise. (New)  
 733.709 Claims undisposed of after 3 years. (New)

**\*733.701 Notice to creditors.**—Every personal representative shall cause a notice to be published, according to the requirements of **\*\*[s. 733.210(2)]**, notifying creditors of the decedent to present their claims within 4 months after the date of the first publication of the notice or be forever barred. Notice to creditors may be combined with the notice of administration required by s. 733.210(1).

**History.**—s. 1, ch. 74-106.

**\*Note.**—Effective July 1, 1975.

**\*\*Note.**—Bracketed material inserted by the editors in lieu of "s. 733.211."

**Note.**—Created from former s. 733.15.

**\*733.702 Limitations on presentation of claims.**—

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, di-

rect or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including, but not limited to, actions founded upon fraud or other wrongful act or **\*\*[omission]** of the decedent, shall be binding on an estate, on the personal representative, or on any beneficiary, unless presented:

(a) Within 4 months from the time of the first publication of the notice to creditors, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. However, the personal representative may settle in full any claim without the necessity of the claim's being filed by the creditor, when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided by this code and when the settlement is made within the statutory time for filing claims.

(b) Within 3 years after the decedent's death, if notice to creditors has not been published.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the 4 months.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

**History.**—s. 1, ch. 74-106.

**\*Note.**—Effective July 1, 1975.

**\*\*Note.**—Bracketed word substituted for "commission" by the editors.

**Note.**—Created from former s. 733.16.

**\*733.703 Form and manner of presenting claim.**—A creditor shall file with the clerk a written statement of the claim, indicating its basis, the name and address of the creditor or his agent or attorney, and the amount claimed. The claim is presented when filed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, **\*\*[or]** the due date of a claim not yet due does not invalidate the presentation made. A creditor shall deliver a copy of the claim to the clerk who shall furnish the copy to the personal representative and note the fact on the original.

**History.**—s. 1, ch. 74-106.

**\*Note.**—Effective July 1, 1975.

**\*\*Note.**—Bracketed word substituted for "and" by the editors.

**Note.**—Created from former s. 733.16.

**Note.**—Created from former s. 733.20.

**733.708 Compromise.**—When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsibility for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Effective January 1, 1976.

**Note.**—Created from former s. 733.21.

**733.709 Claims undisposed of after 1 year.**—

When a person has filed a claim against an estate and the claim has not been paid, settled, or otherwise disposed of and no proceeding is pending for the enforcement or compulsory payment of it at the expiration of 1 year from the date the claim was filed, the claim shall be forever barred. No action shall thereafter be brought to enforce it. This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Effective January 1, 1976.

**Note.**—Created from former s. 733.211.

**733.710 Limitations against unadministered estates.**—After 3 years from the death of a person his estate shall not be liable in any cause of action if no letters have been taken out in Florida within the 3 years or if letters have been taken out but neither publication of notice to creditors has been made nor the claim of any creditor filed. The lien of any duly recorded mortgage or security interest and the lien of any person in possession of any personal property of the decedent and the right to enforce them against the encumbered property shall not be impaired by this section.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220.

**Note.**—Effective January 1, 1976.

**Note.**—Created from former s. 734.29(1).

PART VIII

SPECIAL PROVISIONS FOR DISTRIBUTION

- 733.801 Delivery of devises and distributive shares.
- 733.802 Proceedings for compulsory payment of devises or distributive interest.
- 733.803 Encumbered property; liability for payment.
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- 733.805 Order in which assets are appropriated.
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- 733.810 Distribution in kind; valuation.
- 733.811 Distribution; right or title of distributee.
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- 733.813 Purchasers from distributees protected.
- 733.814 Partition for purpose of distribution.
- 733.815 Private agreements among distributees.
- 733.816 Disposition of unclaimed funds held by personal representatives.
- 733.817 Apportionment of estate taxes.

**733.801 Delivery of devises and distributive shares.**—No personal representative shall be required to pay or deliver any devise or distributive share or to surrender possession of any land to any beneficiary until the expiration of 5 months from the granting of letters.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Effective January 1, 1976.

**Note.**—Created from former s. 734.02.

**733.802 Proceedings for compulsory payment of devises or distributive interest.**—

(1) Before final distribution, no personal representative shall be compelled:

(a) To pay a devise in money before the final settlement of his accounts.

(b) To deliver specific personal property devised, that may have come into his hands, unless the personal property is exempt personal property.

(c) To pay all or any part of a distributive share in the personal estate of a decedent.

(d) To surrender land to any beneficiary,

unless the beneficiary files a petition setting forth the facts that entitle him to relief and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, charges, and expenses of administration, or for providing funds for contribution or enforcing equalization in case of advancements.

(2) An order directing the surrender of real property or the delivery of personal property shall describe the property to be surrendered or delivered. The order shall be conclusive in favor of bona fide purchasers for value from the beneficiary or distributee as against the personal representative and all other persons claiming by, through, under, or against the decedent or his estate.

(3) If the administration of the estate has not been completed before the entry of an order of partial distribution, the court may require the person entitled to distribution to give a bond with sureties as prescribed in s. 45.011, conditioned <sup>2</sup>[on the making of] due contribution for the payment of devises, family allowance, estate and inheritance taxes, claims, elective share of the spouse, charges, expenses of administration, and equalization in case of advancements, plus any interest on them.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Effective January 1, 1976.

**Note.**—Bracketed words substituted for the words "to make."

**Note.**—Created from former s. 734.03.

**733.803 Encumbered property; liability for payment.**—The specific devisee of any encumbered property shall be entitled to have the encumbrance on devised property paid at the expense of the resi-

erwise, the concurrence of all joint personal representatives appointed pursuant to a will or codicil executed prior to October 1, 1987, or appointed to administer an intestate estate of a decedent who died prior to October 1, 1987, or of a majority of joint personal representatives appointed pursuant to a will or codicil executed on or after October 1, 1987, or appointed to administer the intestate estate of a decedent dying on or after October 1, 1987, is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any joint personal representative receives and receipts for property due the estate, when the concurrence required under this subsection cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a joint personal representative has been delegated to act for the others.

(2) Where action by a majority of the joint personal representatives appointed is authorized, a joint personal representative who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting joint personal representative is not liable for the consequences of an act in which he joins at the direction of the majority of the joint personal representatives, if he expressed his dissent in writing to any of his joint personal representatives at or before the time of the joinder.

(3) A person dealing with a joint personal representative without actual knowledge that joint personal representatives have been appointed or if advised by the joint personal representative with whom he deals that the joint personal representative has authority to act alone for any of the reasons mentioned in subsection (1) is as fully protected in dealing with that joint personal representative as if that joint personal representative possessed and properly exercised the power he purports to exercise.

**History.**—s. 1, ch. 74-106; s. 1, ch. 87-317; s. 4, ch. 88-340.

**1Note.**—As amended by s. 4, ch. 88-340. Section 8, ch. 88-340, provides that "this act . . . shall apply to all estates of decedents dying after July 1, 1988."

**Note.**—Created from former s. 732.50.

### **733.617 Compensation of personal representatives and professionals.—**

(1) Personal representatives, attorneys, accountants, and appraisers and other agents employed by the personal representative shall be entitled to reasonable compensation. Reasonable compensation may include compensation for the services of the agents or employees of the person seeking compensation and may also include reimbursement of out-of-pocket costs. Reasonable compensation shall be based on one or more of the following:

- (a) The time and labor required.
- (b) The novelty and difficulty of the questions involved, and the skill requisite to perform the service properly.
- (c) The likelihood that the acceptance of the particular employment will preclude other employment by the person.
- (d) The fee customarily charged in the locality for similar services.
- (e) The nature and value of the assets of the estate, the amount of income earned by the estate, and the re-

sponsibilities and potential liabilities assumed by the person.

- (f) The results obtained.
  - (g) The time limitations imposed by the circumstances.
  - (h) The nature and length of the professional relationship with the decedent.
  - (i) The experience, reputation, diligence, and ability of the person performing the services.
- (2) If a will provides for compensation of the personal representative either directly or conditionally and there is no contract with the decedent regarding compensation, he may renounce the provisions and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A renunciation may be filed with the court.

(3) If the personal representative is a member of The Florida Bar and has rendered legal services in connection with his official duties, he shall be allowed a fee therefor, determined as provided in subsection (1).

**History.**—s. 1, ch. 74-106; s. 80, ch. 75-220; s. 1, ch. 76-172; s. 5, ch. 88-340.

**1Note.**—As amended by s. 5, ch. 88-340. Section 8, ch. 88-340, provides that "this act . . . shall apply to all estates of decedents dying after July 1, 1988."

**Note.**—Created from former s. 734.01.

## **PART VII**

### **CREDITORS' CLAIMS**

- 733.702 Limitations on presentation of claims.  
733.705 Payment of and objection to claims.

#### **733.702 Limitations on presentation of claims.—**

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless presented:

(a) Within 3 months after the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the

person or not, unless the claim is filed in the manner provided in this part and within the time limited.

<sup>1</sup>(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only in the estate administration proceeding, only after notice, and only upon grounds of fraud or estoppel. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted.

(4) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

<sup>1</sup>(c) The filing of a claim by the Department of Revenue subsequent to the expiration of 3 months after the publication of the notice of administration as provided in paragraph (1)(a), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.

(d) The filing of a cross-claim or counterclaim against the estate in an action instituted by the estate; however, no recovery on such a cross-claim or counterclaim shall exceed the estate's recovery in such an action.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 2, ch. 80-127; s. 4, ch. 81-27; s. 160, ch. 83-216; s. 5, ch. 84-106; s. 4, ch. 85-79; s. 6, ch. 88-340.

**Note.**—As amended by s. 6, ch. 88-340. Section 8, ch. 88-340, provides that "this act . . . shall apply to all estates of decedents dying after July 1, 1988."

**Note.**—Created from former s. 733.16.

### **733.705 Payment of and objection to claims.—**

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such claims pursuant to subsections (3), (4), and (5). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

<sup>1</sup>(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. An objection by an interested person to a personal representative's

proof of claim shall state the particular item or items to which the interested person objects. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing an objection to any claim or may extend the time for serving the objection. The extension of time shall be granted only after notice.

<sup>1</sup>(3) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future. For good cause, the court may extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding on the claim shall be brought against the personal representative after the time limited above, and any such claim is thereafter forever barred without any court order. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(4) If an unmatured claim has not become due before the time for distribution of an estate, the personal representative may prepay the full amount of principal plus accrued interest due on the claim, without discount and without penalty, regardless of any prohibition against prepayment or provision for penalty in any instrument on which the claim is founded. If the claim is not prepaid, no order of discharge may be entered until the creditor and personal representative have filed an agreement disposing of the claim, or in the absence of an agreement until the court provides for payment by one of the following methods:

(a) Requiring the personal representative to reserve such assets as the court determines to be adequate to pay the claim when it becomes due; in fixing the amount to be reserved, the court may determine the value of any security or collateral to which the creditor may resort for payment of the claim and may direct the reservation, if necessary, of sufficient assets to pay the claim or to pay the difference between the value of any security or collateral and the amount necessary to pay the claim. If the estate is insolvent, the court may direct a proportionate amount to be reserved. The court shall direct that the amount reserved be retained by the personal representative until the time that the claim becomes due, and that so much of the reserved amount as is not used for payment be distributed thereafter according to law;

(1) Personal representatives, attorneys, accountants, and appraisers and other agents employed by the personal representative shall be entitled to reasonable compensation. Reasonable compensation may include compensation for the services of the agents or employees of the person seeking compensation and may also include reimbursement of out-of-pocket costs. Reasonable compensation shall be based on one or more of the following:

- (a) The time and labor required.
- (b) The novelty and difficulty of the questions involved, and the skill requisite to perform the service properly.
- (c) The likelihood that the acceptance of the particular employment will preclude other employment by the person.
- (d) The fee customarily charged in the locality for similar services.
- (e) The nature and value of the assets of the estate, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person.
- (f) The results obtained.
- (g) The time limitations imposed by the circumstances.
- (h) The nature and length of the professional relationship with the decedent.
- (i) The experience, reputation, diligence, and ability of the person performing the services.

(2) If a will provides for compensation of the personal representative either directly or conditionally and there is no contract with the decedent regarding compensation, he may renounce the provisions and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A renunciation may be filed with the court.

(3) If the personal representative is a member of The Florida Bar and has rendered legal services in connection with his official duties, he shall be allowed a fee therefor, determined as provided in subsection (1).

**History.**—s. 1, ch. 74-106; s. 80, ch. 75-220; s. 1, ch. 76-172; s. 5, ch. 88-340.  
**Note.**—Section 8, ch. 88-340, provides that “[t]his act . . . shall apply to all estates of decedents dying after July 1, 1988.”

**Note.**—Created from former s. 734.01.

**733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.**—After notice to all affected interested persons and upon petition of an interested person bearing all or part of the impact of the payment of compensation to the personal representative or any person employed by him, the propriety of such employment and the reasonableness of such compensation or payment may be reviewed by the court. The burden of proof of propriety of such employment and the reasonableness of the compensation shall be upon the personal representative and the person employed by him. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

**History.**—s. 2, ch. 76-172.

**733.619 Individual liability of personal representative.**—

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee, properly entered into in his fiduciary capacity in the administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

**History.**—s. 82, ch. 75-220; s. 32, ch. 77-87; s. 228, ch. 77-104.

## PART VII

### CREDITORS' CLAIMS

- 733.701 Notifying creditors.
- 733.702 Limitations on presentation of claims.
- 733.703 Form and manner of presenting claim.
- 733.704 Amendment of claims.
- 733.705 Payment of and objection to claims.
- 733.706 Executions and levies.
- 733.707 Order of payment of expenses and obligations.
- 733.708 Compromise.
- 733.710 Limitations on claims against estates.

**733.701 Notifying creditors.**—Unless the proceedings are under chapter 734 or chapter 735, every personal representative shall cause notice of administration to be published and served under section 733.212.

**History.**—s. 1, ch. 74-106; s. 83, ch. 75-220; s. 33, ch. 77-87; s. 4, ch. 89-340.  
**Note.**—Created from former s. 733.15.

**733.702 Limitations on presentation of claims.**—

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed within the later of 13 months after the time of the first publication of the notice of administration or, as to any creditor required to be served with a copy of the notice of administration, 30 days after the date of service of such copy of the notice on the creditor, even though the personal representative has recognized the claim or demand by

paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or, within 3 months after the first publication of the notice of administration, he may file a proof of claim of all claims he has paid or intends to pay.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time limited.

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension or be forever barred, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

(4) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of the time for filing claims provided in subsection (1), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.

(d) The filing of a cross-claim or counterclaim against the estate in an action instituted by the estate; however, no recovery on such a cross-claim or counterclaim shall exceed the estate's recovery in such an action.

(5) Nothing in this section shall extend the limitations period set forth in s. 733.710.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 2, ch. 80-127; s. 4, ch. 81-27; s. 160, ch. 83-216; s. 5, ch. 84-106; s. 4, ch. 85-79; s. 6, ch. 88-340; s. 5, ch. 89-340.

**Note.**—Section 8, ch. 88-340, provides that "[t]his act . . . shall apply to all estates of decedents dying after July 1, 1988."

**Note.**—Created from former s. 733.16.

### 733.703 Form and manner of presenting claim.—

(1) A creditor shall file a written statement of the claim. No additional charge may be imposed by a claimant who files a claim against the estate.

(2) A claimant whose claim is listed in a personal representative's proof of claim filed within 3 months after the first publication of the notice of administration shall be deemed to have filed a statement of the claim listed. Except as provided otherwise in this part, the claim shall be treated for all other purposes as if it had been filed by the claimant.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 5, ch. 81-27; s. 5, ch. 85-79; s. 6, ch. 89-340.

**Note.**—Created from former s. 733.16.

**733.704 Amendment of claims.**—If a bona fide attempt to file a claim is made by a creditor but the claim is defective as to form, the court may permit the amendment of the claim at any time.

**History.**—s. 1, ch. 74-106; s. 1, ch. 77-174.

**Note.**—Created from former s. 733.17.

### 733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such claims pursuant to subsections (4), (5), (6), and (7). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 5 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing an objection to any claim or may extend the time for serving the objection. The extension of time shall be granted only after notice.

(3) An objection by an interested person to a personal representative's proof of claim shall state the particular item or items to which the interested person objects and shall be filed and served as provided in subsection (2). Issues of liability as between the estate and the personal representative individually for items paid by the personal representative and thereafter listed in a personal representative's proof of claim shall be determined in the estate administration proceeding, in a pro-

manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 8, ch. 89-340.

**Note.**—Created from former s. 733.19.

### **733.707 Order of payment of expenses and obligations.**—

(1) The personal representative shall pay the expenses of the administration and obligations of the estate in the following order:

(a) *Class 1.*—Costs, expenses of administration, and compensation of personal representatives and their attorneys' fees.

(b) *Class 2.*—Reasonable funeral, interment, and grave-marker expenses, whether paid by a guardian under s. 744.441(16), the personal representative, or any other person, not to exceed the aggregate of \$3,000.

(c) *Class 3.*—Debts and taxes with preference under federal law.

(d) *Class 4.*—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him.

(e) *Class 5.*—Family allowance.

(f) *Class 6.*—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.

(g) *Class 7.*—All other claims, including those founded on judgments or decrees rendered against the decedent during his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 35, ch. 77-87; s. 7, ch. 85-79; s. 69, ch. 87-226.

**Note.**—Created from former s. 733.20.

**733.708 Compromise.**—When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsibility for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Created from former s. 733.21.

### **1733.710 Limitations on claims against estates.**—

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative (if any), nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.

(3) This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220; s. 36, ch. 77-87; s. 9, ch. 89-340.  
**Note.**—As amended by s. 9, ch. 89-340, effective with respect to persons dying after July 1, 1989.

**Note.**—Created from former s. 734.29(1).

## **PART VIII**

### **SPECIAL PROVISIONS FOR DISTRIBUTION**

- 733.801 Delivery of devises and distributive shares.
- 733.802 Proceedings for compulsory payment of devises or distributive interest.
- 733.803 Encumbered property; liability for payment.
- 733.805 Order in which assets are appropriated.
- 733.806 Advancement.
- 733.808 Death benefits; disposition of proceeds.
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- 733.810 Distribution in kind; valuation.
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- 733.814 Partition for purpose of distribution.
- 733.815 Private agreements among distributees.
- 733.816 Disposition of unclaimed property held by personal representatives.
- 733.817 Apportionment of estate taxes.

**733.801 Delivery of devises and distributive shares.**—No personal representative shall be required to pay or deliver any devise or distributive share or to surrender possession of any land to any beneficiary until the expiration of 5 months from the granting of letters.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Created from former s. 734.02.

**733.802 Proceedings for compulsory payment of devises or distributive interest.**—

(1) Before final distribution, no personal representative shall be compelled:

(a) To pay a devise in money before the final settlement of his accounts,

(b) To deliver specific personal property devised that may have come into his hands, unless the personal property is exempt personal property,

(c) To pay all or any part of a distributive share in the personal estate of a decedent, or

(d) To surrender land to any beneficiary,

unless the beneficiary files a petition setting forth the facts that entitle him to relief and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, elective share of the surviving spouse, charges, or expenses of administration or for providing funds for contribution or enforcing equalization in case of advancements.

or who drafted the will is employed, the compensation paid shall not exceed the compensation provided in the agreement.

(8) Court proceedings to determine compensation, if required, are a part of the estate administration process, and the costs, including fees for the personal representative's attorney, shall be determined by the court and paid from the assets of the estate unless the court finds the request for attorney's fees to be substantially unreasonable. The court shall direct from which part of the estate they shall be paid.

(9) The amount and manner of determining compensation for attorneys for personal representatives must be disclosed in the final accounting, unless the disclosure is waived in writing signed by the parties bearing the impact of the compensation and filed with the court. No such waiver shall be valid unless it contains language declaring that the waiving party has actual knowledge of the amount and manner of determining such compensation and, in addition, expressly acknowledging either one of the following two elements:

(a) That the waiving party has agreed to the amount and manner of determining such compensation and is waiving any objections to payment of such compensation; or

(b) That the waiving party has the right under subsection (5) to petition the court to decrease such compensation and is waiving that right.

The requirements of this subsection shall not apply if the full amount of such compensation has previously been determined by order of the court after notice. A waiver of the final accounting shall not be effective if it does not meet the requirements of this subsection.

(10) This section shall apply to estates in which an order of discharge has not been entered prior to its effective date but not to those estates in which attorney's fees have previously been determined by order of court after notice.

**History.**—s. 4, ch. 93-257; s. 2, ch. 95-401.

**733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.**—After notice to all affected interested persons and upon petition of an interested person bearing all or part of the impact of the payment of compensation to the personal representative or any person employed by him, the propriety of such employment and the reasonableness of such compensation or payment may be reviewed by the court. The burden of proof of propriety of such employment and the reasonableness of the compensation shall be upon the personal representative and the person employed by him. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

**History.**—s. 2, ch. 76-172.

**733.619 Individual liability of personal representative.**—

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee, properly entered into in his fiduciary capacity in the administra-

tion of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

**History.**—s. 82, ch. 75-220; s. 32, ch. 77-87; s. 228, ch. 77-104.

## PART VII

### CREDITORS' CLAIMS

- 733.701 Notifying creditors.
- 733.702 Limitations on presentation of claims.
- 733.703 Form and manner of presenting claim.
- 733.704 Amendment of claims.
- 733.705 Payment of and objection to claims.
- 733.706 Executions and levies.
- 733.707 Order of payment of expenses and obligations.
- 733.708 Compromise.
- 733.710 Limitations on claims against estates.

**733.701 Notifying creditors.**—Unless the proceedings are under chapter 734 or chapter 735, every personal representative shall cause notice of administration to be published and served under section 733.212.

**History.**—s. 1, ch. 74-106; s. 83, ch. 75-220; s. 33, ch. 77-87; s. 4, ch. 89-340.

**Note.**—Created from former s. 733.15.

**733.702 Limitations on presentation of claims.**—

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed within the later of 3 months after the time of the first publication of the notice of administration or, as to any creditor required to be served with a copy of the notice of administration, 30 days after the date of service of such copy of the notice on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely

affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or, within 3 months after the first publication of the notice of administration, he may file a proof of claim of all claims he has paid or intends to pay.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed within the time periods set forth in this part.

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension or be forever barred, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

(4) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of the time for filing claims provided in subsection (1), provided it does so file within 30 days after the service of the inventory by the personal representative on the department or, in the event an amended or supplementary inventory has been prepared, within 30 days after the service of the amended or supplementary inventory by the personal representative on the department.

(d) The filing of a cross-claim or counterclaim against the estate in an action instituted by the estate; however, no recovery on such a cross-claim or counterclaim shall exceed the estate's recovery in such an action.

(5) Nothing in this section shall extend the limitations period set forth in s. 733.710.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 2, ch. 80-127; s. 4, ch. 81-27; s. 160, ch. 83-216; s. 5, ch. 84-106; s. 4, ch. 85-79; s. 6, ch. 88-340; s. 5, ch. 89-340; s. 4, ch. 90-23.

**Note.**—Created from former s. 733.16.

### 733.703 Form and manner of presenting claim.—

(1) A creditor shall file a written statement of the claim. No additional charge may be imposed by a claimant who files a claim against the estate.

(2) A claimant whose claim is listed in a personal representative's proof of claim filed within 3 months after the first publication of the notice of administration shall be deemed to have filed a statement of the claim listed. Except as provided otherwise in this part, the claim shall be treated for all other purposes as if it had been filed by the claimant.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 5, ch. 81-27; s. 5, ch. 85-79; s. 6, ch. 89-340.

**Note.**—Created from former s. 733.16.

**733.704 Amendment of claims.**—If a bona fide attempt to file a claim is made by a creditor but the claim is defective as to form, the court may permit the amendment of the claim at any time.

**History.**—s. 1, ch. 74-106; s. 1, ch. 77-174.

**Note.**—Created from former s. 733.17.

### 733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such claims pursuant to subsections (4), (5), (6), and (7). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 5 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration or within 30 days from the timely filing of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. An objection to a claim shall contain a statement that the claimant is limited to a period of 30 days from the date of service of the objection within which to bring an action on the claim as provided in subsection (4). The failure to include such a statement in the objection shall not affect the validity of the objection but may be considered as good cause for extending the time for filing an action or proceeding after the objection is filed. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant or the claimant's attorney as shown on the claim or by delivery to the claimant to whose claim the person objects or the claimant's attorney of record, if any, not later than 10 days after the objection has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing an objection to any claim or may extend the time for serving the objection. The extension of time shall be granted only after notice.

(3) An objection by an interested person to a personal representative's proof of claim shall state the particular item or items to which the interested person objects and shall be filed and served as provided in subsection (2). Issues of liability as between the estate and the personal representative individually for items paid by the personal representative and thereafter listed in a personal representative's proof of claim shall be deter-

judgments against a decedent shall be filed in the same manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 8, ch. 89-340.

**Note.**—Created from former s. 733.19.

### **733.707 Order of payment of expenses and obligations.—**

(1) The personal representative shall pay the expenses of the administration and obligations of the estate in the following order:

(a) *Class 1.*—Costs, expenses of administration, and compensation of personal representatives and their attorneys' fees.

(b) *Class 2.*—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian under s. 744.441(16), the personal representative, or any other person, not to exceed the aggregate of \$3,000.

(c) *Class 3.*—Debts and taxes with preference under federal law.

(d) *Class 4.*—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him.

(e) *Class 5.*—Family allowance.

(f) *Class 6.*—Arrearage from court-ordered child support.

(g) *Class 7.*—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.

(h) *Class 8.*—All other claims, including those founded on judgments or decrees rendered against the decedent during his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (c), either alone or in conjunction with any other person, is liable for the expenses of the administration of the decedent's estate and enforceable claims of the decedent's creditors to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(2).

(a) For purposes of this subsection, any trusts established as part of, and all payments from, either an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an Individual Retirement Account, as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan established by a corporation which is qualified under s. 401 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(b) For purposes of this subsection, any trust described in s. 664 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(c) This subsection shall not impair any rights an individual has under a qualified domestic relations order as that term is defined in s. 414(p) of the Internal Revenue Code of 1986, as amended.

(d) For purposes of this subsection, property held or received by a trust to the extent that the property would not have been subject to claims against the decedent's estate if it had been paid directly to a trust created under the decedent's will or other than to the decedent's estate, or assets received from any trust other than a trust described in this subsection, shall not be deemed assets of the trust available for the payment of the expenses of administration of and enforceable claims against the decedent's estate.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 35, ch. 77-87; s. 7, ch. 85-79; s. 69, ch. 87-226; s. 20, ch. 93-208; s. 11, ch. 93-257; s. 10, ch. 95-401.

**Note.**—Created from former s. 733.20.

**733.708 Compromise.**—When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsibility for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.

**Note.**—Created from former s. 733.21.

### **733.710 Limitations on claims against estates.—**

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative (if any), nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

(2) This section shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after the person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705.

(3) This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220; s. 36, ch. 77-87; s. 9, ch. 89-340.

**Note.**—Created from former s. 734.29(1).

## **PART VIII**

### **SPECIAL PROVISIONS FOR DISTRIBUTION**

- 733.801 Delivery of devises and distributive shares.
- 733.802 Proceedings for compulsory payment of devises or distributive interest.
- 733.803 Encumbered property; liability for payment.
- 733.805 Order in which assets are appropriated.
- 733.806 Advancement.
- 733.808 Death benefits; disposition of proceeds.

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SYNOPSIS OF HOUSE BILL 997

The Uniform Probate Code was prepared and adopted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association at its 1969 annual meeting. The Code advances the proposition that laws relating to the affairs of decedents, minors and certain other persons whose circumstances make protection of their persons or property desirable, and trust proceedings, should be modernized and made uniform throughout the country. The Code, however, unlike many uniform laws, provides an enacting state generous flexibility in conforming the Code to that sovereign's peculiarities and unique aspects of local law.

The project which produced the Code received considerable attention after early 1966 when widespread public discussion of probate law reform was generated by the best seller How To Avoid Probate and other publications. Eventually, the Uniform Probate Code came to be seen as the response by the organized bar to repeated charges that lawyers profit from the overly protective and outmoded features of American probate law and would do nothing to encourage law reform. It is clear that the Code's approval in 1969 was possible because hundreds of lawyers had become convinced that it offered carefully worked out and constructive answers to accumulated problems of local probate law.

The Florida version of the Uniform Probate Code is presently divided into seven (7) chapters embracing many of the subjects which one may find in a comprehensive state probate code, and some subjects which have not heretofore been included anywhere under the general heading of probate law. Some of the familiar topics which are covered in whole or in part by the Code and are listed here by the terms one may expect to use in working with existing state codes include the following: Decedents' Estates, Executors and Administrators, Intestate Succession, Wills, Contracts for Wills, Ancillary Administration, Guardian and Ward, Conservators, Fiduciaries, Trusts and Trustees, and Probate Court. This list is misleading to the extent that it suggests that the Code covers the substantive law of Trusts, for this subject is not reached by coverage which, though it deals briefly with the duty and liability of trustees, concentrates on the relationship between courts and trusts. Article VI of the original Uniform Probate Code has been omitted from the present Florida version awaiting proposed modifications by the Florida Bar's Real Property, Probate and Trust Section Special Committee examining the Uniform Probate Code.

Briefly, the major provisions and outline of House Bill 997 is set forth below:

Section 1.

Chapter 731

A principal objective of Chapter 731 is to describe the court and public office to which procedural provisions in the rest of the Code relate. This is accomplished in Part 3 of this chapter. The significant point to grasp is that the Code describes functions for two different kinds of public official. Judicial proceedings under the Code are handled by the Circuit Court, a full power court of very broad subject matter jurisdiction. Except as altered to accommodate special proceedings under the Code, rules of practice, appellate review and other aspects of civil practice will be the same for probate as for other litigation. Other responsibilities described by the Code, including those termed "informal proceedings" and not intended to be judicial matters, are performed by the "Registrar", a non-judicial official designated by the judge of the Circuit Court who is able to exercise some discretion but with sharply limited power.

The other features of Chapter 731 include Section 731.201 which contains a long list of definitions and very important to one's comprehension of the Code. Sections 731.106, 731.107 and 731.108 deal with fraud, proof of death, and the status of general powers of appointment under the Code and are important as they relate to other provisions of the Code.

Part 4 of Chapter 731 describes methods of giving notice to persons involved in litigation under the Code and certain rules for determining when particular persons may be bound by orders binding others.

Chapter 732

Chapter 732 of the Code covers the important, substantive portions of the law concerning succession to property of decedents. One of the included systems set forth in Part 1 contains the statutory answers to the question of who takes property of a decedent which is left to pass intestate. Parts 2, 3 and 4 create certain degrees of protection for the spouse and children of a decedent. The spouse, with no distinction being made in regard to sex, is protected against transfers by gift to take effect at death made by the decedent during the marriage or by will. The protective system assures the spouse of at least one-third of the value of the property in the probate estate augmented for purposes of the calculation by certain gift transfers from the decedent to others which the Code specifies. Any gifts or other values, including that passing by life insurance, to the surviving spouse are taken into account so that a spouse who has been well provided for by the decedent cannot upset the decedent's estate plan for others. Part 3 protects a spouse or a child who appears to have been omitted from a decedent's will through oversight. Part 4, dealing with exceptions, has the effect of giving a spouse or surviving minor children approximately \$10,000 "off the top" of the probate estate,

meaning that so much in assets or value may be claimed ahead of creditors and ahead of the terms of any will.

The foregoing parts of Chapter 732, augmented by a later part which clarifies the meaning of "spouse" when there has been a separation or divorce, frame what may be called the "law's estate plan".

As may be noted, a person who leaves a spouse cannot affect the devolution of the first \$10,000 of assets. If only adult children survive, the will can control after exemptions of only \$4,000, as well as debts and expenses, have been covered. The intestate provisions apply to what is left after exemptions and charges have been met where there is no will. If the decedent left a spouse and was survived by issue, the statutory plan gives the first \$50,000 to the surviving spouse and divides the balance of the intestate estate, if any, between surviving spouse and issue. Since most married persons of modest means want the surviving spouse to receive all assets at death, it is believed that the Code will enable many married persons to avoid worrying about wills and estate plans. Hopefully the Code may restore some public confidence in the law in this area which has been shaken by the suggestion that lawyers profit from undesirable rules on intestacy which force persons to law offices for corrective wills.

The remaining parts of Chapter 732 are concerned with the law of wills, selecting from among the wide array of rules dealing with execution, revocation, revival of wills and lapse, abatement and ademption of devises, those aimed toward reducing outworn formal requirements and increasing the prospect of finding and effectuating decedents' intentions.

#### Chapter 733 and Chapter 734

Chapters 733 and 734 cover the subjects of probate and contest of wills, appointment of personal representatives, status, powers and duties of personal representatives, administration and distribution of decedents' estates, and the degree of local recognition of foreign probate orders and personal representatives appointed by the courts of other states. Overall the chapters create what has been called "The Flexible System of Administration of Decedents' Estates". The objective of the system is to provide necessary opportunities and safeguards to permit persons interested in decedents' estates to be able to settle estates with quite minimal contact with any public office. It is inherent in the approach, however, that interested persons, including personal representatives, are enabled to use the Code's court and its system for binding interested persons by order following mailed notice and hearing and to secure a final order on any matter which may involve an estate or a personal representative. The key concept,

changing the relationship between probate courts and personal representatives from that now accepted in Florida, is that the court or registrar, though inevitably involved in the creation of the status of personal representative, does not exercise supervisory jurisdiction over its appointee. Without regard for whether appointment was secured in formal proceedings before the court, or obtained in informal proceedings before the registrar, the appointing authority has no authority to check the work of a personal representative or to make orders relating to him, except when either the representative or other interested person petitions for some order or relief in proceedings begun after the appointment has been completed. However, it should be recognized that the Code does not deny individuals the opportunity to utilize the strict and traditional route of supervised administration of a decedent's estate where circumstances warrant such protections.

A considerable part of the bulk of Chapter 733 results from the effort to provide statutory duties, powers and directions for personal representatives so that most of the administrative aspects of estate settlement can be handled by appointees much in the manner in which the trustee of a well-drafted trust would discharge his responsibility.

The prime introducers of the Florida version of the Uniform Probate Code support the definite effort by the original draftsmen of the Code to unify probate administrations affecting more than one state so that the personal representative appointed at the decedent's domicile can handle estate problems affecting matters located in other states. However, in an effort to cause the least disruption in regard to ancillary administration in Florida, at least until a majority of the states have adopted the Uniform Probate Code, House Bill 997 entertains only a slight expansion of the list of non-residents who may enter and administer an estate of a non-domiciliary decedent having property in Florida. Under the Florida version only the decedent's spouse, adopted child or an individual within three degrees of lineal consanguinity to the decedent or spouses of such persons may administer the estate of a non-domiciliary decedent having property in Florida.

#### Chapter 735

Chapter 735 deals with the broad area of legal care for persons and property of individuals who, because of minority, senility, incompetence, absence or other circumstances, are unable properly to care for themselves or their dependents. One important section, designed to reduce the necessity for guardianships for minors, protects persons owing relatively small sums of money to minors who discharge the debt by making certain payments to adults with whom the minor makes his home. Another set of sections changes agency law relating to Powers of Attorney so that powers may be useful instruments for managing the affairs of one who may drift into incompetence or senility.

The Code offers several categories of more formal protective devices. Personal guardians of minors may be named by will of the surviving parent of the minor without any court activity. Court-appointed guardians of the persons of minors are also available. For minors who have extensive property interests, the Code encourages use of a conservatorship, rather than the personal guardian. If both guardian and conservator are needed, the Code divides the responsibility between the two offices so that the child-raising responsibilities are separated from the fiduciary management of the estate.

Essentially the same supportive arrangements are available for problems involving incompetent or disabled adults. One of the features of the conservatorship proceeding is that it may be instituted to secure needed property management without a finding that the owner is incompetent.

The proceedings which lead to appointment of a conservator may lead to alternative relief which does not involve appointment of a fiduciary. For example, the order might ratify and confirm a contract of a minor or an adult whose competence is in question. Or, the proceeding might be brought to enable renewal of a lease which produces income needed for the support of an elderly person.

#### Chapter 737

The principal purpose of Chapter 737 is to provide a common set of procedural provisions governing the relationship between all kinds of trusts and the Circuit Court. The chapter abandons the ideas of supervisory jurisdiction, court appointment or qualification of trustees and mandatory court accountings. Inter vivos, as well as testamentary trustees are related to a court at the principal place of administration of their trust. This court has power to solve any question arising between trustee and beneficiaries, but may act only on petition of some interested person.

#### Section 2.

##### Chapter 738

Chapter 738 deals with the transition to occur upon the effective date of this act.

#### Section 3.

##### Uniform Probate Code Study Commission

This section of the bill establishes a thirteen member study commission designed to serve as a conduit or orderly process through which modifications or suggestions for further additions or deletions to the Code may be considered during the interim before the next regular session of the legislature. Such a commission will insure that Florida's probate law provides an efficient and

effective system for governing the property and affairs of persons and decedents.

Section 4.

Section 4 sets forth certain sections of present Florida Statutes to be amended upon the effective date of this act.

Section 5.

Section 5 enumerates those sections of existing Florida Statutes to be repealed upon the effective date of this act.

Section 6.

Section 6 sets forth those chapters of Florida Statutes to be repealed upon the effective date of this act.

Section 7.

Effective date

Section 7 provides for a January 1, 1975 effective date.

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## PART 8

## CREDITORS' CLAIMS

## GENERAL COMMENT

The need for uniformity of law regarding creditors' claims against estates is especially strong. Commercial and consumer credit depends upon efficient collection procedures. The cost of credit is pushed up by the cost of credit life insurance which becomes a practical necessity for lenders unwilling to bear the expense of understanding or using the cumbersome and provincial collection procedures found in 50 codes of probate.

The sections which follow facilitate collection of claims against decedents in several ways. First,

a simple written statement mailed to the personal representative is a sufficient "claim." Allowance of claims is handled by the personal representative and is assumed if a claimant is not advised of disallowance. Also, a personal representative may pay any just claims without presentation and at any time, if he is willing to assume risks which will be minimal in many cases. The period of uncertainty regarding possible claims is only four months from first publication. This should expedite settlement and distribution of estates.

**Section 3-801. [Notice to Creditors.]**

Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the [county] announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

## COMMENT

Section 3-1203, relating to small estates, contains an important qualification on the duty created by this section.

Failure to advertise for claims would involve a breach of duty on the part of the personal representative. If, as a result of such breach, a claim is later asserted against a distributee under Section 3-1004, the personal representative may be liable to the distributee for costs related to discharge of the claim and the recovery of contribution from other distributees. The protection

afforded personal representatives under Section 3-1003 would not be available, for that section applies only if the personal representative truthfully recites that he has advertised for claims as required by this section.

It would be appropriate, by court rule, to channel publications through the personnel of the probate court. See Section 1-401. If notices are controlled by a centralized authority, some assurance could be gained against publication in newspapers of

small circulation. Also, the form of notices could be made uniform and certain efficiencies could be achieved. For example, it would be compatible with this section for the Court to publish a single

notice each day or each week listing the names of personal representatives appointed since the last publication, with addresses and dates of non-claim.

**Section 3-802. [Statutes of Limitations.]**

Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 3-804 is equivalent to commencement of a proceeding on the claim.

## COMMENT

This section means that four months is added to the normal period of limitations by reason of a debtor's death before a debt is barred. It implies also that after the expiration of four months from death, the normal statute of limitations may run and bar a claim even though the non-claim provisions of Section 3-803 have not been triggered. Hence, the non-claim and limitation provisions of Section 3-803 are not exclusive.

It should be noted that under Sections 3-803 and 3-804 it is

possible for a claim to be barred by the process of claim, disallowance and failure by the creditor to commence a proceeding to enforce his claim prior to the end of the four month suspension period. Thus, the regular statute of limitations applicable during the debtor's lifetime, the non-claim provisions of Sections 3-803 and 3-804, and the three-year limitation of Section 3-803 all have potential application to a claim. The first of the three to accomplish a bar controls.

**Section 3-803. [Limitations on Presentation of Claims.]**

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal

representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with Section 3-801; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.

(2) within [3] years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within 4 months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

#### COMMENT

There was some disagreement among the Reporters over whether a short period of limitations, or of non-claim, should be provided for claims arising at or after death. Sub-paragraph (b) was finally inserted because most felt it was desirable to accelerate the time when unadjudicated distributions would be final. The time limits stated would not, of course, affect any personal liability in contract, tort, or by statute, of the personal representative. Under Section 3-808 a personal rep-

resentative is not liable on transactions entered into on behalf of the estate unless he agrees to be personally liable or unless he breaches a duty by making the contract. Creditors of the estate and not of the personal representative thus face a special limitation that runs four months after performance is due from the personal representative. Tort claims normally will involve casualty insurance of the decedent or of the personal representative, and so will fall within the ex-

ception of subparagraph (c). If a personal representative is personally at fault in respect to a tort claim arising after the decedent's death, his personal liability would not be affected by the running of the special short period provided here.

The limitation stated in subparagraph (2) of (a) dove-tails

with the three-year limitation provided in Section 3-108 to eliminate most questions of succession that are controlled by state law after 3 years from death have elapsed. Questions of interpretation of any will probated within such period, or of the identity of heirs in intestacy are not barred, however.

#### Section 3-804. [Manner of Presentation of Claims.]

Claims against a decedent's estate may be presented as follows:

(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the Court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the Court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any Court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the

# LAW DICTIONARY

WITH

## PRONUNCIATIONS

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law of the place where the contract by its terms is to be performed. See 11 Am Jur 403.

*Lex spectat naturae ordinem* (lex spek'tat nā-tū'rē or'di-nem). The law regards the order of nature.

*lex sub graviore lege* (lex sub gra-vi-ō're lē'je). A law subordinate to higher law. "A state which has not the exclusive dominion over its territory, is more or less dependent and weak; and its 'eminent domain,' modified by the will of others, is *lex sub graviore lege*." See *Sneed v. Ewing*, 5 J. J. Marshall (Ky.) 460, 22 Am. Dec. 41, 56.

*Lex succurrit ignorantī* (lex su-ker'rit ignō-ran'ti). The law succors ignorance.

*Lex succurrit minoribus* (lex su-ker'rit mī-nō'ri-bus). The law aids minors.

*lex talionis* (lex ta-li-ō'nis). The law of retaliation; that is, the principle which would require such a sentence upon a person convicted of crime as would inflict upon him the same hurt he has done to his neighbor, as, if a man put out his neighbor's eye, he should lose one of his own; but if his neighbor had but one eye, he should lose both of his. See 4 Bl. Comm. 12.

See *membrum pro membro*.

*lex terrae* (lex ter'rē). The law of the land.

*Lex uno ore omnes alloquitur* (lex ū'nō o're om'nēz al-lō'qui-ter). The law speaks to all with one mouth.

*Lex vigilantibus favet* (lex vi-ji-lan'ti-bus fa'vet). The law favors those who are vigilant.

*Lex vigilantibus, non dormientibus* (lex vi-ji-lan'ti-bus, non dor-mi-en'ti-bus). The law is for the vigilant, not for those who slumber. "Men who would punish the faults of others, must be careful not to allow defaults themselves." See *Toole v. Cook*, 16 Howard Pr. (N. Y.) 142, 144.

*Lex vigilantibus, non dormientibus subvenit* (lex vi-ji-lan'ti-bus, non dor-mi-en'ti-bus sub-vē'nit). The law aids the vigilant, not those who slumber.

*ley* (lā). Law; the law; an oath.

*ley civile* (lā si-vē'l'). The civil law; the civil law of the Romans.

*ley gager* (lay gah'zhay). To wage one's law.

See *wager of law*.

*leze majesty* (lays mah'zhēs-ty). Same as *lése majesté*.

*liability* (li-ā-bil'i-ti). The state or condition of a person who is responsible for payment or who is under obligation to pay. See 37 A.L.R. 647, note. It is also defined

as the state or condition of a person after he has breached his contract or violated any obligation resting upon him. See *Lattin v. Gillette*, 95 Cal. 317, 29 Am. St. Rep. 115, 30 Pac. Rep. 545.

As a legal term, the word means that condition of affairs which gives rise to an obligation to do a particular thing to be enforced by action; as we say a principal is liable for the acts of his agent. See *Haywood v. Shreve*, 44 N. J. Law, 94, 104.

See *civil liability*; *contingent liability*; *enlarged liability*; *fixed liability*; *incur*; *liability reserve*; *limitation of liability*; *loss from liability*; *responsibility*; *severally liable*; *stockholders' liability*, et seq.

*liability insurance*. See *employers' liability insurance*.

*liability reserve*. See *reserve*.

*libel* (lī'bel). A malicious publication, expressed either in printing or writing, or by signs and pictures, tending either to blacken the memory of one dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule. 33 Am Jur 38.

*Absolutely privileged*—see *privileged communications*; *privileged occasion*; *blasphemous libel*; *calumny*; *censure*; *colloquium*; *comment*; *conditionally privileged*; *criminal libel*; *criticism*; *de copia libelli deliberanda*; *defamation*; *defamatory*; *defamer*; *effigy*; *eunuch*; *express malice*; *fair comment*; *famicide*; *famosus libellus*; *general damages in defamation*; *good faith in defamation*; *graft*; *hell*; *humbug*; *ignominy*; *inducement*; *innuendo*; *intimacy*; *intimate*; *judicial proceeding*; *libellus famosus*; *libelous*; *libelous per se*; *malice*; *malice in fact*; *malice in law*; *obloquy*; *privileged communications*; *privileged occasion*; *probable cause*; *publication*; *publication as a crime*—see *publication*; *public character*; *publish*; *qualifiedly privileged*—see *privileged communications*; *privileged occasion*; *qualified privilege*; *reproach*; *sedition*; *shyster*; *slacker*; *slander*; *slut*; *unfair comment*; *words actionable per quod*; *words actionable per se*.

*libelant*. Same as *libellant*.

*libelee*. Same as *libellee*.

*libel in admiralty* (lī'bel in ad'mi-rā'l-ti). That pleading in an admiralty suit which corresponds to the declaration in a common law action. 1 Am Jur 592.

See *cross libel*; *libellant*; *libellee*; *mutation of libel*.

*libellant* (lī'bel-ant). The complaining party in an admiralty or ecclesiastical suit.

*libellee* (lī'bel-ē). The defendant in an admiralty or ecclesiastical suit.

*libellous* (lī'bel-us). Same as *libelous*.

*libellus famosus* (lī'bel-us fam-o'sus).

ō in abrogate; o in valor. u in tub; ū in mute; ù in pull; ũ in singular; ü in nature. One dot below vowel in unaccented syllable means a shortening of the sound, as in *prelāte*; two dots mean that the syllable is to have the short u-sound of *but*, *pun*, as in *errānt*.

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## Aethusa

**Aethusa**, *n.* [Gr. *aithousa*, *f.* ppr. of *aithain*, to burn.] a genus of poisonous plants of the parsley family, *umbelliferae*.

**ae-ti-ol-og'i-cal**, *a.* same as *etiological*.

**ae-ti-ol-og'i-cal-ly**, *adv.* same as *etiological*.

**ae-ti-ol-og-y**, *n.* [Gr. *aitia*, cause, and *logos*, description.] same as *etiology*.

**ae-ti-t'es**, *n.* [L., from Gr. *aetiēs*, from *aetos*, eagle.] eaglestone; a variety of bog iron.

**Ae-tol-li-an**, *a.* of Aetolia, a region in the western part of ancient Greece, or of its people, customs, etc.

**Ae-tol-li-an**, *n.* a native or inhabitant of Aetolia.

**af-**, *ad-* in an assimilated form before *f*, as in *affix*.

**af-far'**, *adv.* at a distance in place; to or from a distance, used absolutely or with *from* preceding, or *off* following. [Poetic or Archaic.]

**af-fear'd**, *a.* [AS. *afæred*, pp. of *afæran*, to frighten, from *a* and *fær*, terror.] afraid. [Archaic or Dial.]

**af-fé-brile**, *a.* [*a-*, not, and *febrile*.] having no fever.

**Af-fer**, *n.* [L., African] the southwest wind.

**af-fa-bil'i-ty**, *n.* the quality or state of being affable; readiness to converse; civility and courteousness in receiving others and in conversation; winning sociability.

**af-fa-ble**, *a.* [Fr. *affable*; L. *affabilis*, easy to be spoken to, from *ad*, to, and *fari*, to speak.]

1. easy to approach and talk to; courteous; complaisant; of easy manners.

2. kindly of aspect; benign; gracious; as, an *affable* mien: opposed to *forbidding*.

**Syn.**—courteous, civil, complaisant, accessible, mild, benign, gracious, urbane, polite.

**af-fa-ble-ness**, *n.* affability.

**af-fa-bly**, *adv.* in an affable manner.

**af-fair'**, *n.* [ME. *afere*; OFr. *affaire*; Fr. *affaire*, from *à faire*, to do; L. *ad*, to, and *facere*, to do.]

1. business of any kind; that which is done, or is to be done.

2. [*pl.*] transactions in general; as, human *affairs*, political or ecclesiastical *affairs*, public *affairs*, a man of *affairs*.

3. [*pl.*] matters of business.

4. any matter, occurrence, or thing.

5. [from *love affair*] an amorous relationship or episode between two people not married to each other; an amour.

**Syn.**—business, concern, matter, subject, transaction, occurrence.

**af-faire' d'a-mour'**, [Fr.] a love affair.

**af-faire' d'è coeur** (kooor), [Fr., an affair of the heart.] a love affair.

**af-faire' d'hon-neur'** (dò-noor'), [Fr., an affair of honor.] a duel.

**af-fam'ish**, *v.t.* [see *famish*.] to starve. [Obs.]

**af-fam'ish-ment**, *n.* a starving. [Obs.]

**af-fat'u-ate**, *v.t.* to infatuate. [Obs.]

**af-fear'**, *v.t.* to frighten. [Obs.]

**af-fect'**, *v.t.*, affected, *pl.*, *pp.*; affecting, *ppr.* [Fr. *affecter*; L. *affectare*, to strive after.]

1. to act upon; to produce an effect or change upon; as, cold *affects* the body; loss *affects* our interests.

2. to move or stir the emotions of; as, *affected* by grief.

3. to aim at; aspire to; to put on a pretense of; as, to *affect* imperial sway.

4. to frequent or haunt; as, the deer *affects* the forest.

5. to love, or regard with fondness. [Obs.]

6. to be pleased with or take a fancy to [Obs.]

7. to imitate or assume the character of; as, he *affects* the airs of his superiors.

8. to make a pretentious display of; as, he *affects* a style of dress that is ridiculous.

9. to attempt to imitate, in a manner not natural; to assume a fake appearance of; to feign; as, to *affect* to be grave; *affected* friendship.

Spencer, in *affecting* the ancients, writ no language. —B. Jonson.

**Syn.**—assume, arrogate, pretend, feign, put on, influence, move, interest, act on, concern.

**af-fect'**, *n.* 1. a disposition or tendency. [Obs.]

2. in psychology, (a) an emotion, feeling, or mood as a factor in behavior; (b) a stimulus arousing an emotion, feeling, or mood.

**af-fec-ta'tion**, *n.* [L., *affectatio(n)*, from *affectare*, to strive after, imitate.] an attempt to assume or exhibit what is not natural or real; false pretense; artificial appearance, or show; as, an *affectation* of wit or virtue.

**af-fect'ed**, *a.* 1. attacked by disease; afflicted.

2. influenced; acted upon.

3. emotionally moved or touched.

4. disposed.

5. given to false show; assuming, or pretending to possess what is not natural or real; as, an *affected* young woman.

6. assumed for effect; artificial; not natural; as, *affected* airs.

7. in algebra, designating or of an equation in which there are two or more powers of the unknown quantity.

**af-fect'ed-ly**, *adv.* in an affected manner; hypocritically; with more show than reality; as, to walk *affectedly*; *affectedly* civil.

**af-fect'ed-ness**, *n.* the quality of being affected; affectation.

**af-fect'er**, *af-fect'or*, *n.* a person who affects something.

**af-fect-i-bil'i-ty**, *n.* the state of being affectible. [Rare.]

**af-fect'i-ble**, *a.* that may be affected. [Rare.]

**af-fect'ing**, *a.* 1. exciting or touching the emotions; moving; pathetic; as, an *affecting* address.

The most *affecting* music is generally the most simple. —Mitford.

2. full of affectation. [Obs.]

**Syn.**—moving, pathetic, touching, tender, impressive, exciting.

**af-fect'ing-ly**, *adv.* in an affecting manner; in a manner to excite the emotions.

**af-fec'tion**, *n.* [Fr. *affectio*; L. *affectio*, from *affectare*, to affect.]

1. the state of being affected.

2. a mental state or tendency; disposition.

3. fond or tender feeling; warm liking; as, the *affectio* of a parent for his child. The word is also often used in this sense in the plural; as, he won her *affectio*ns.

4. in a general sense, an attribute, quality, or property; as, love, fear, and hope are *affectio*ns of the mind; form, weight, and dimensions are *affectio*ns of bodies.

5. the state of the mind toward a thing; disposition toward; inclination.

6. a disease, or any diseased state, as, a gouty *affectio*ns.

**Syn.**—fondness, attachment, kindness, love, liking, tenderness.

**af-fec'tion-ál**, *a.* of the affections.

**af-fec'tion-áte**, *a.* 1. having great love, or affection; fond; as, an *affectio*nsate brother.

2. warm in feeling; zealous. [Obs.]

Man, in his love to God, and desire to please him, can never be too *affectio*nsate. —Sprat.

3. proceeding from affection; indicating love; benevolent; tender; as, the *affectio*nsate care of a parent; an *affectio*nsate disposition.

4. strongly inclined; used with *to*. [Obs.]

**Syn.**—tender, attached, loving, devoted, warm, fond, earnest, kind, ardent.

**af-fec'tion-áte-ly**, *adv.* with affection; fondly; tenderly; kindly.

**af-fec'tion-áte-ness**, *n.* the quality of being affectionate.

**af-fec'tion-ed**, *a.* disposed; inclined. [Rare.]

Kindly *affectio*nsed one to another. —Rom. xii.

**af-fec'tive**, *a.* that affects or excites emotion; emotional.

**af-fec'tive-ly**, *adv.* in an affective manner.

**af-fec'tiv'i-ty**, *n.* in psychology, sensitivity to emotional stimuli; tendency to affects, or emotional responses.

**af-fec'tu-ous**, *a.* full of affection. [Obs.]

**af-feer'**, *v.t.* [ME. *afeer*; OFr. *affeurer*; L. *afforare*, to fix a price; from *ad*, to, and *forum*, market.]

1. in old English law, to fix the amount of (an amercement); to assess.

2. to confirm. [Obs.]

**af-feer-ment**, *n.* the act of affeering.

**af-feer'or**, *af-feer'er*, *n.* a person who affeers.

**af-fer-ent**, *a.* [L. *afferens*, ppr. of *afferre*, *ad*, to, and *ferre*, to bear.] in physiology, bringing inward to a central part; as, *afferent* nerves.

**af-fet-tú-ó'só**, *a.* [It.] tender; affecting; in music, a direction to the performer.

**af-fi-ánce**, *n.* [ME. *afiance*, *afiance*; OFr. *afiance*, from *afier*, to trust in.]

1. the marriage contract or promise; betrothal.

2. trust, reliance, or faith.

The Christian looks to God with implicit *afiance*. —Atterbury.

**af-fi-ánce**, *v.t.*; affianced, *pl.*, *pp.*; affiancing, *ppr.* 1. to betroth; to pledge in marriage, or to promise marriage to.

2. to promise solemnly; to pledge.

## affirmation

**af-fi-ánced** (-áncst), *n.* one betrothed; a future husband or wife.

I with my *affiánced*. —Tennyson.

**af-fi-án-cér**, *n.* one who makes a contract of marriage between two persons.

**af-fi-ánt**, *n.* [OFr. *afiant*, ppr. of *affier*, to pledge one's faith.] in law, one who makes an affidavit.

**af-fi-áche'**, *n.* [Fr. *afficher*, to fasten to.] a paper or bill posted in a public place; a poster.

**af-fi-dá-vit**, *n.* [L. he has made oath. Perf. tense of *affidare*.] a declaration upon oath; a declaration in writing signed by the party and sworn to, usually before a notary public.

**af-fi-le'**, *v.t.* [Fr. *affiler*; L. *ad*, to, and *fil*, thread.] to sharpen. [Obs.]

**af-fi-l'i-á-ble**, *a.* capable of being affiliated.

**af-fi-l'i-áte**, *v.t.*; affiliated, *pl.*, *pp.*; affiliating, *ppr.* [Fr. *affilier*, from L. *ad*, to, and *filius*, son.]

1. to adopt as a member or branch.

2. to connect or associate (oneself).

3. to trace the origin and connections of.

4. to determine legally the paternity of (an illegitimate child).

**Syn.**—adopt, admit, initiate, receive.

**af-fi-l'i-áte**, *v.t.* to unite or associate oneself; as, to *affiliate* with a political party.

**af-fi-l'i-á-tion**, *n.* 1. adoption; association, as with organizations, clubs, etc.

2. in law, the fixing of the paternity of a child.

3. the assignment of anything to its origin; connection by way of descent.

**af-fi-nál**, *a.* [OFr. *afin*, *afin*, a kinsman or ally; L. *afinis*, from *ad*, to, and *finis*, border, end.] related by marriage.

**af-fi-ne'**, *v.t.* to refine. [Obs.]

**af-fi-ned'**, *a.* joined in affinity.

**af-fi-n'i-tá-tive**, *a.* of the nature of affinity.

**af-fi-n'i-tá-tive-ly**, *adv.* by means of affinity.

**af-fi-n'i-tive**, *a.* closely connected.

**af-fi-n'i-ty**, *n.* [L. *afinitas*, from *afinis*, adjacent, related by marriage; *ad*, to, and *finis*, end.]

1. the relation contracted by marriage; distinguished from *consanguinity*, or relation by blood.

Solomon made *afinity* with Pharaoh. —1 Kings iii. 1.

2. a condition of close relationships; conformity; resemblance; connection; as, the *afinity* of sounds, of colors, or of languages.

3. in chemistry, that force by which atoms of certain elements combine and stay combined.

4. a resemblance in general plan or structure, or in the essential structural parts, existing between species, languages, etc., implying common origin.

5. a mutual attraction between individuals of opposite sex; also, either of the individuals so attracted; as, there is an *afinity* between us; she is my *afinity*.

6. companionship; acquaintance. [Obs.]

**Syn.**—alliance, kindred, relationship.

**af-firm'**, *v.t.*; affirmed, *pl.*, *pp.*; affirming, *ppr.* [ME. *affermen*; OFr. *affirmer*; L. *affirmare*, to present as fixed; *ad*, to, and *firmare*, to make firm.]

1. to assert positively; to tell with confidence; to aver; to declare the existence of; to maintain as true; opposed to *deny*.

**Affirming** each his own philosophy. —Tennyson.

2. to establish, confirm, or ratify; as, the supreme court *affirmed* the judgment.

**Syn.**—aver, protest, assert, asseverate, assure, protest, avouch, confirm, establish, ratify, declare, pronounce.

**af-firm'**, *v.t.* 1. to make a positive statement, as of fact.

2. to declare formally and solemnly before a court without taking an oath; to make a legal affirmation.

**af-firm'a-ble**, *a.* capable of being asserted or declared; followed by *of*; as, charity in judgment is *affirmable* of every just man.

**af-firm'a-bly**, *adv.* in a way capable of affirmation.

**af-firm'ánce**, *n.* 1. confirmation; ratification; as, the *affirmance* of a judgment; a statute in *affirmance* of common law.

2. declaration; affirmation. [Rare.]

They swear it till *affirmance* breeds a doubt. —Cowper.

3. in law, an upholding by an upper court of a lower court's judgment.

**af-firm'ánt**, *n.* one who affirms; one who makes a legal affirmation.

**af-fir-má-tion**, *n.* [L. *affirmatio*, from *affirmare*, to affirm.]

pretest

**prē'test**, *n.* 1. a test given a student before entering a course of instruction, to determine his fitness for the course.

2. a preliminary training test designed to acquaint a student with the methods of replying to test questions.

**prē-test'**, *v.t.* and *v.i.* to test beforehand.

**prē-tēr-vec'tion**, *n.* [L. *praeteriectio* (-onis), from *praeter* + *vehere*, to carry beyond.] the act of carrying by or beyond. [Rare.]

**prē-tex'**, *v.t.* to cloak; to conceal; to devise; to fabricate; to allege falsely. [Obs.]

**prē-text'**, *v.t.* to employ as a cover or pretext.

**prē-text**, *n.* [L. *praetextum*, neut. of *praetextus*, pp. of *praetextere*, to weave before.] pretense; false appearance; ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive.

We need not by silence give the least *pretext* for uncertainty. —Grover Cleveland.

**Syn.**—pretense, disguise, semblance, excuse.

**prē-text'ed**, *a.* applied or used as an excuse.

**prē-text'ure**, *n.* a pretext. [Obs.]

**prē-thō-rac'ic**, *a.* in anatomy, situated above or in front of the thorax; applied particularly to those vertebrae in front of or over those containing the thoracic ribs.

**prē-tib'i-āl**, *a.* in anatomy, situated upon the front of the tibia; as, a *pretibial* muscle.

**prē-ti-um** (-shī-), *n.* [L.] the money or price paid for a thing.

*pretium affectionis*; in law, the price above its value set upon a thing by its owner because of his affection for it.

*pretium laborum non vile*; the value of the labor is not trifling; the motto of the Order of the Golden Fleece.

*pretium periculi*; a premium for insurance; the price given for a risk.

*pretium puellae*; in law, the price of a maiden: from a system formerly practiced by early Teutonic races, in which a woman could be given in marriage only after the payment of something of value to her guardian.

**prē-tō-ne**, *n.* the syllable or vowel which immediately precedes the accented syllable.

**prē-ton'ic**, *a.* 1. in music, preceding a tone; as, a *pretonic* note.

2. in philology, preceding the accent.

**prē-tōr**, *n.* same as *praetor*.

**prē-tō'ri-āl**, *a.* same as *praetorial*.

**prē-tō'ri-ān**, *a.* and *n.* same as *praetorian*.

**Prē-tō'ri-ā sē'ries**, [named after *Pretoria* in South Africa.] in geology, the second uppermost subdivision of the South African, pre-Devonian rocks of the Transvaal system: it is made up of beds of iron ore, lavas, shales, etc.

**prē-tōr'tū-re**, *v.t.* to torture beforehand.

**prē-trēat'**, *v.t.* to treat beforehand, as in some processes of manufacture in order to facilitate an operation or prevent damage or change.

**prē-trēa'ty**, *a.* before a treaty.

**prē-trē-mat'ic**, *a.* [L. *prae*, before, and Gr. *trēma*, *trēmatos*, a hole.] in zoology, situated in or pertaining to the front wall of the first gill cleft.

**prē-ti-fy** (prīt'), *v.t.*; prettified, *pl.*, *pp.*; prettifying, *ppr.* to overembellish; to make pretty, especially in a finical way.

**prē-ti-kin** (prīt'), *n.* [dim. from AS. *prætt*, a trick.] in the Orkney Islands, a feat or trick.

**prē-ti-ly** (prīt'), *adv.* 1. in a pretty manner; with neatness and taste; pleasingly without magnificence or splendor; as, a woman *prettily* dressed.

2. with decency, good manners, and decorum.

Children kept out of ill company take a pride to behave themselves *prettily*.

—Locke.

**prē-ti-ness** (prīt'), *n.* the state or quality of being pretty; dainty beauty of feature; neatness and taste of finish; delicate harmony of sound.

**prē'ty** (prīt'), *a.*; *comp.* prettier; *superl.* prettiest. [AS. *prættig*, crafty; possibly from LL. *practicus*, skilled.]

1. pleasing; attractive; implying daintiness, delicacy, or gracefulness rather than striking beauty, elegance, grandeur, or stateliness.

2. fine; good; nice: often used ironically.

3. foppish.

4. elegant. [Archaic.]

5. brave; bold; gallant. [Archaic or Scot.]

6. considerable; rather large in amount or extent. [Colloq.]

7. sly; crafty. [Obs.]

8. cunning; able. [Obs.]

**Syn.**—elegant, fine, dainty, handsome, agreeable.

preview

ing, so that in one sense he can claim to have said the truth, though he does in fact deceive, and intends to do it; he who *prevaricates* talks all around the question, hoping to dodge it by confusing the issue and disclose nothing.

**prē-var'i-cā-te**, *v.t.* to pervert; to corrupt; to evade by a quibble. [Obs.]

**prē-var'i-cā'tion**, *n.* 1. a prevarication or quibbling to evade the truth or the disclosure of truth; the practice of some trick for evading what is just or honorable; a deviation from the plain path of truth and fair dealing.

2. in civil law, the collusion of an informer with the defendant for the purpose of making a sham prosecution. [Obs.]

3. in common law, a false or apparent undertaking of a thing for the purpose of defeating or destroying it. [Obs.]

4. a secret abuse in the exercise of a public office or commission. [Obs.]

**prē-var'i-cā-tōr**, *n.* 1. one who prevaricates; a quibbler.

2. one who abuses a trust. [Obs.]

**prē-ve**, *v.t.* and *v.i.* to prove. [Obs.]

**prē-ve**, *n.* proof. [Obs.]

**prē-ven'ance**, *n.* [Fr. *prévenance*.] the act of going before.

**prē-ven'ān-cy**, *n.* [Fr. *prévenance*.] anticipatory courtesy or civility; readiness to oblige. [Rare.]

**prē-ven'e**, *v.t.* [L. *praevēnīre*; *prae*, before, and *venīre*, to come.] to come or go before; hence, to hinder. [Obs.]

**prē-ven'ience** (-yens), *n.* the condition or fact of being preventive.

**prē-ven'ient** (-yent), *a.* [L. *praevēniens* (-entis), *ppr.* of *praevēnīre*, to go before.]

1. going before; preceding.

2. anticipating; expectant.

3. antecedent to human action; as, *preventive* grace.

**prē-vent'**, *v.t.*; prevented, *pl.*, *pp.*; preventing, *ppr.* [L. *praevēnīre*, *praevēnīre*, to anticipate; *prae*, before, and *venīre*, to come.]

1. formerly, (a) to act in anticipation of (an event or a fixed time); (b) to anticipate (a desire, want, objection, etc.); (c) to anticipate in action; (d) to precede; (e) to forestall; balk; frustrate.

2. to stop or keep from doing something.

3. to keep from happening; to make impossible by prior action; to hinder.

4. to preoccupy (one's mind). [Obs.]

**Syn.**—block, stop, thwart, debar, repress, interrupt.

**prē-vent'**, *v.i.* to come before the usual time. [Obs.]

**prē-vent'ā-bil'i-ty**, *n.* the quality or the condition of being preventable.

**prē-vent'ā-ble**, *a.* capable of being prevented or hindered; also spelled *preventible*.

**prē-vent'ā-tive**, *n.* and *a.* same as *preventive*.

**prē-vent'ēr**, *n.* 1. one who goes before. [Obs.]

2. one who hinders; a hinderer; that which hinders; as, a *preventer* of evils or of disease.

3. in nautical language, any contrivance of rope, spar, cable, etc. to secure safety by bracing; as, a *preventer* stay to the mainmast.

*preventer bolts* or *preventer plates*; bolts or plates used for attaching stays or braces in the rigging of a ship.

*preventer stay*; an auxiliary stay used to strengthen a mast, etc.

**prē-vent'ing-ly**, *adv.* in such a manner or way as to hinder.

**prē-ven'tion**, *n.* [Fr. *prévention*; LL. *praevēntio*, from L. *praevēnīre*, pp. of *praevēnīre*, to anticipate.]

1. the act of going before. [Obs.]

2. anticipation. [Obs.]

3. the act of hindering or preventing.

4. a means of preventing; hindrance; an obstacle.

5. prejudice; prepossession. [Obs.]

**prē-ven'tion-āl**, *a.* tending to prevent. [Obs.]

**prē-ven'tive**, *a.* [Fr. *préventif*.] anticipating; preventing or serving to prevent; specifically, in medicine, preventing disease: also *preventive*.

*preventive service*; in England, a service rendered by armed men in preventing smuggling along the coast; the coast guard. [Obs.]

**prē-ven'tive**, *n.* that which prevents; specifically, in medicine, something administered to prevent disease; a prophylactic: also *preventive*.

**prē-ven'tive-ly**, *adv.* by way of prevention; in a manner that tends to hinder.

**prē-ven'tē-brāl**, *a.* situated in front of a vertebra.

**prē-view** (-vū), *n.* 1. a previous view or sur-

**prē'ty**, *adv.* somewhat; to some extent or degree; tolerably; moderately; as, a farm *pretty* well stocked; a *pretty* wide river; a *pretty* good appetite.

*pretty much*; in a high degree; to a great extent; nearly all; as, a garment is *pretty much* worn out; the building is *pretty much* dilapidated; the cut of steak is *pretty much* bone. [Colloq.]

*sitting pretty*; in a favorable position. [Slang.]

**Syn.**—fairly.

**prē'ty**, *n.*; *pl.* **prē'ty-ties**, a pretty person or thing.

**prē'ty-fāce**, *n.* a small bulbous plant, *Callioprora lutea*, of the lily family, growing in California and characterized by its handsome umbellate yellow flowers shaped like stars.

**prē'ty-ish**, *a.* somewhat pretty.

**prē'ty-spō'ken**, *a.* spoken or speaking prettily; having an agreeable manner of speaking.

**prē-ty'p'i-fy**, *v.t.*; pretypified, *pl.*, *pp.*; pretypifying, *ppr.* to prefigure; to typify beforehand; to foreshadow.

**prē-tyzel** (-sel), *n.* [G.] a hard, brittle biscuit in the shape of a knotted ring made of slender rolls of dough, dipped in hot lye, and sprinkled with salt.

**prē-vāil'**, *v.i.*; prevailed, *pl.*, *pp.*; prevailing, *ppr.* [Fr. *prévaloir*; from L. *praevalere*; *prae*, before, and *valere*, to be strong or well.]

1. to overcome; to gain the victory or superiority; to gain the advantage: used often with *over* or *against*.

When Moses held up his hand, Israel prevailed.

—Ex. xvii. 11.

This kingdom could never prevail against the united power of England. —Swift.

2. to be or become stronger or more widespread; to predominate.

3. to exist widely; to be in general use; to be prevalent.

4. to be effective; to produce or achieve the desired effect; to operate effectually; to succeed.

He had power over the angel, and prevailed.

—Hos. xii. 4.

5. to persuade or induce: with *on*, *with*, or *upon*; as, they prevailed on the emperor to ratify the treaty; he prevailed upon his friend to accompany him.

**prē-vāil'ing**, *a.* [*ppr.* of *prevail*.]

1. being superior in strength or influence.

2. predominant.

3. widely existing; prevalent.

4. efficacious.

**Syn.**—predominant, dominant, ruling, efficacious, overcoming, prevalent, overruling, successful.

**prē-vāil'ing-ly**, *adv.* so as to prevail; with success.

**prē-vāil'ment**, *n.* prevalence. [Rare.]

**prē-vā-lence**, *n.* [Fr. *prévalence*; ML. *praevā-lentia*, from L. *praevalere*.]

1. predominance. [Rare.]

2. widespread existence; general practice, occurrence, or acceptance.

**prē-vā-len-cy**, *n.* prevalence.

**prē-vā-lent**, *a.* [L. *praevā-lentis* (-entis), *ppr.* of *praevalere*, to prevail.]

1. prevailing; gaining or having the superiority; superior in force, influence, or efficacy; victorious; efficacious. [Rare.]

2. widely spread or current; generally received, adopted, or practiced; prevailing; as, a *prevalent* disease, opinion, rumor, belief, sentiment, etc.

**prē-vā-lent-ly**, *adv.* in a widespread manner.

**prē-var'i-cā-te**, *v.i.*; prevaricated, *pl.*, *pp.*; prevaricating, *ppr.* [L. *praevāricari*, to prevaricate, to be guilty of collusion; *prae*, before, and *varicus*, straddling, from *varus*, bent.]

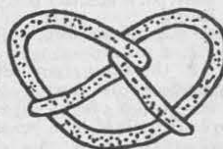
1. to quibble; to shift or turn aside from or evade the truth; to equivocate or speak evasively.

2. loosely, to lie.

3. in civil law, to collude, as where an informer colludes with the defendant and makes a sham prosecution. [Obs.]

4. in common law, to undertake a thing falsely and deceitfully with the purpose of defeating or destroying it. [Obs.]

**Syn.**—evade, equivocate.—One who *evades* a question ostensibly answers it, but really turns aside to some other point; he who *equivocates* uses words which have a double mean-



PRETZEL