CHAPTER 732

PROBATE CODE: INTESTATE SUCCESSION AND WILLS

PART I INTESTATE SUCCESSION (ss. 732.101-732.111)

PART II ELECTIVE SHARE OF SURVIVING SPOUSE (ss. 732.201-732.228)

PART III PRETERMITTED SPOUSE AND CHILDREN (ss. 732.301, 732.302)

PART IV EXEMPT PROPERTY AND ALLOWANCES (ss. 732.401-732.403)

PART V WILLS (ss. 732.501-732.518)

PART VI RULES OF CONSTRUCTION (ss. 732.6005-732.611)

PART VII CONTRACTUAL ARRANGEMENTS RELATING TO DEATH (ss. 732.701, 732.702)

PART VIII GENERAL PROVISIONS (ss. 732.801-732.804)

PART IX PRODUCTION OF WILLS (s. 732.901)

PART X ANATOMICAL GIFTS (ss. 732.910-732.922)

PART I

INTESTATE SUCCESSION

732.101 Intestate estate.
732.102 Share of spouse.
732.103 Share of other heirs.
732.104 Inheritance per stirpes.
732.105 Half blood.
732.106 Afterborn heirs.
732.107 Escheat.
732.108 Adopted persons and persons born out of wedlock.
732.109 Debts to decedent.
732.1101 Aliens.
732.111 Dower and curtesy abolished.

732.101 Intestate estate.—

(1) Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this code.

(2) The decedent's death is the event that vests the heirs' right to intestate property.

History.—s. 1, ch. 74-106; s. 8, ch. 75-220.

Note.—Created from former s. 731.23.

732.102 Share of spouse.—

(1) The intestate share of the surviving spouse is:

(a) If there is no surviving lineal descendant of the decedent, the entire intestate estate.

(b) If there are surviving lineal descendants of the decedent, all of whom are lineal descendants of the surviving spouse also, the first $20,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated hereunder to the surviving spouse to satisfy the $20,000 shall be valued at the fair market value on the date of the decedent's death.

(c) If there are surviving lineal descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

(2) The court shall allot the property to which the spouse is entitled, treating all beneficiaries equitably.

History.—s. 1, ch. 74-106; s. 8, ch. 75-220.

Note.—Created from former s. 731.23.

732.103 Share of other heirs.—The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

(1) To the lineal descendants of the decedent.

(2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.

(3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.

(4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:

(a) To the grandfather and grandmother equally, or to the survivor of them.

(b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.

(c) If there is no paternal kindred or if there is no maternal kindred, the estate shall go to such of the kindred as shall survive in the order aforesaid.

(5) If there is no kindred of either part, the whole of such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

History.—s. 1, ch. 74-106; s. 8, ch. 75-220; s. 1, ch. 77-174.

Note.—Created from former s. 731.23.

732.104 Inheritance per stirpes.—Descent shall be per stirpes, whether to lineal descendants or to collateral heirs.

History.—s. 1, ch. 74-106; s. 9, ch. 75-220.
Note.—Created from former s. 731.25.

732.105 Half blood.—When property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the half blood, those of the half blood shall inherit only half as much as those of the whole blood; but if all are of the half blood they shall have whole parts.

History.—s. 1, ch. 74-106; s. 10, ch. 75-220.
Note.—Created from former s. 731.24.

732.106 Afterborn heirs.—Heirs of the decedent conceived before his death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.

History.—s. 1, ch. 74-106; s. 10, ch. 75-220; s. 6, ch. 77-87.
Note.—Created from former s. 731.11.

732.107 Escheat.—

(1) When a person leaving an estate dies without being survived by any person entitled to it, the property shall escheat to the state.

(2)(a) In this event, or when doubt exists about the existence of any person entitled to the estate, the personal representative shall institute a proceeding for the determination of beneficiaries, as provided in this code, within 1 year after letters have been issued to him, and notice shall be served on the Department of Legal Affairs. If the personal representative fails to institute the proceeding within the time fixed, it may be instituted by the Department of Legal Affairs.

(b) On or before January 15 of each year, each court shall furnish to the department a list of all estates being administered in which no person appears to be entitled to the property and the personal representative has not instituted a proceeding for the determination of beneficiaries.

(3) If the court determines that there is no person entitled to the estate and that the estate escheats, the property shall be sold and the proceeds paid to the Treasurer of the state and deposited by him in the State School Fund within a reasonable time to be fixed by the court.

(4) At any time within 10 years after the granting of letters, a person claiming to be entitled to the estate of the decedent may petition to reopen the administration and assert his rights to escheated property. If the claimant is entitled to any of the estate of the decedent, the court shall fix the amount to which he is entitled, and it shall be repaid to him with interest at the legal rate by the officials charged with the disbursement of state school funds. If no claim is asserted within the time fixed, the title of the state to the property and the proceeds shall become absolute.

(5) The Department of Legal Affairs shall represent the state in all proceedings concerning escheated estates.

(6)(a) If a person entitled to the funds assigns his rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such person, the Department of Banking and Finance is authorized to make distribution in accordance with such assignment.

(b) Payments made to an attorney or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney or private investigative agency in a financial institution authorized to accept such deposits and located in this state.

(c) Distribution by the attorney or private investigative agency to the person entitled to the funds shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests in writing such distribution before it is made.

(d) The department shall not be civilly or criminally liable for any funds distributed pursuant to this subsection, provided such distribution is made in good faith.

(7) Except as herein provided, escheated estates shall be administered as other estates.

History.—s. 1, ch. 74-106; s. 10, ch. 75-220; s. 4, ch. 89-291; s. 9, ch. 89-298.
Note.—Created from former s. 731.33.

732.108 Adopted persons and persons born out of wedlock.—

(1) For the purpose of intestate succession by or from an adopted person, the adopted person is a lineal descendant of the adopting parent and is one of the natural kindred of all members of the adopting parent's family, and he is not a lineal descendant of his natural parents, nor is he one of the kindred of any member of his natural parent's family or any prior adoptive parent's family, except that:

(a) Adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and the natural parent or the natural parent's family.

(b) Adoption of a child by a natural parent's spouse who married the natural parent after the death of the other natural parent has no effect on the relationship between the child and the family of the deceased natural parent.

(c) Adoption of a child by a close relative, as defined in s. 63.172(2), has no effect on the relationship between the child and the families of the deceased natural parents.

(2) For the purpose of intestate succession in cases not covered by subsection (1), a person born out of wedlock is a lineal descendant of his mother and is one of the natural kindred of all members of the mother's family. The person is also a lineal descendant of his father and is one of the natural kindred of all members of the father's family, if:

(a) The natural parents participated in a marriage ceremony before or after the birth of the person born out of wedlock, even though the attempted marriage is void.

(b) The paternity of the father is established by an adjudication before or after the death of the father.

(c) The paternity of the father is acknowledged in writing by the father.

History.—s. 1, ch. 74-106; s. 11, ch. 75-220; s. 7, ch. 77-87; s. 1, ch. 77-174; s. 2, ch. 87-27.
Note.—Created from former ss. 731.29, 731.30.

732.109 Debts to decedent.—A debt owed to the decedent shall not be charged against the intestate share of any person except the debtor. If the debtor does not survive the decedent, the debt shall not be taken into account in computing the intestate share of the debtor's heirs.
History.—s. 1, ch. 74-106; s. 11, ch. 75-220.
Note.—Created from former s. 736.01.

732.1101 Aliens.—No person is disqualified to take as an heir because he, or a person through whom he claims, is, or has been, an alien.
History.—s. 1, ch. 74-106; s. 113, ch. 75-220.
Note.—Created from former s. 731.28.

732.111 Dower and curtesy abolished.—Dower and curtesy are abolished.
History.—s. 1, ch. 74-106; s. 113, ch. 75-220.

PART II

ELECTIVE SHARE OF SURVIVING SPOUSE

732.201 Right to elective share.
732.205 Elective share; restricted to Florida resident decedent.
732.206 Property entering into computation.
732.207 Amount of the elective share.
732.208 Interests in addition to elective share.
732.209 Elective share; from what assets payable.
732.210 Right of election; by whom exercisable.
732.211 Effect of exercise of right of election on testamentary or statutory disposition.
732.212 Time of election.
732.213 Preexisting right to dower.
732.214 Proceedings on the election.
732.215 Effect of elective share on taxes.
732.216 Short title.
732.217 Application.
732.218 Rebuttable presumptions.
732.219 Disposition upon death.
732.221 Perfection of title of personal representative, heir, or devisee.
732.222 Purchaser for value or lender.
732.223 Perfection of title of surviving spouse.
732.224 Creditor's rights.
732.225 Acts of married persons.
732.226 Limitations on testamentary disposition.
732.227 Homestead defined.
732.228 Uniformity of application and construction.

732.201 Right to elective share.—The surviving spouse of a person who dies domiciled in Florida shall have the right to a share of the estate of the deceased spouse as provided in this part, to be designated the elective share.
History.—s. 1, ch. 74-106; s. 13, ch. 75-220.
Note.—Created from former s. 731.34.

732.205 Elective share; restricted to Florida resident decedent.—No elective share in Florida property of a decedent not domiciled in Florida shall exist.
History.—s. 15, ch. 75-220; s. 8, ch. 77-87.

732.206 Property entering into computation.—The elective share shall be computed by taking into account all property of the decedent wherever located that is subject to administration except real property not located in Florida.
History.—s. 15, ch. 75-220.

732.207 Amount of the elective share.—The elective share shall consist of an amount equal to 30 percent of the fair market value, on the date of death, of all assets referred to in s. 732.206, computed after deducting from the total value of the assets:
(1) All valid claims against the estate paid or payable from the estate; and
(2) All mortgages, liens, or security interests on the assets.
History.—s. 15, ch. 75-220; s. 1, ch. 81-27.

732.208 Interests in addition to elective share.—The elective share shall be in addition to exempt property and allowances as provided in part IV.
History.—s. 15, ch. 75-220.

732.209 Elective share; from what assets payable.
(1) Unless otherwise provided in the will of the decedent, the elective share shall be paid from assets passing under the will which, but for the election, would have passed outright to the surviving spouse and then, to the extent such assets are insufficient, from assets in the order prescribed in s. 733.805.
(2) If property must otherwise be sold to provide the elective share, the person who would otherwise have been entitled to the property may pay the amount assessed against the property interest to the personal representative and receive the property.
History.—s. 15, ch. 75-220.

732.210 Right of election; by whom exercisable.—The right of election may be exercised:
(1) By the surviving spouse.
(2) By a guardian of the property of the surviving spouse. The court having jurisdiction of the probate proceeding shall determine the election as the best interests of the surviving spouse require.
History.—s. 15, ch. 75-220.

732.211 Effect of exercise of right of election on testamentary or statutory disposition.—If an election is filed, the remaining assets of the estate after payment of the elective share shall be distributed as though the surviving spouse had predeceased the decedent.
History.—s. 15, ch. 75-220; s. 1, ch. 77-174.

732.212 Time of election.—The election shall be filed within 4 months from the date of the first publication of notice of administration, but, if a proceeding occurs involving the construction, admission to probate, or validity of the will or on any other matter affecting the estate whereby the complete extent of the estate subject to the elective share may be in doubt, the surviving spouse shall have 40 days from the date of termination of all the proceedings in which to elect.
History.—s. 15, ch. 75-220.

732.213 Preexisting right to dower.—Whether or not her husband's estate is administered, dower of the widow of any man who died before October 1, 1973, shall be barred in any real property conveyed by her hus-

band before his death and without her relinquishment of dower unless within 3 years after her husband's death she records with the clerk for the county where the real property is located an instrument executed by her describing the property in a manner sufficient to give constructive notice if contained in a recorded deed. The instrument shall name the record owner or owners of the property, state the date of the husband's death and his place of residence at the time of his death, and indicate that she has elected to take dower or that she may elect to do so. Nothing in this section shall extend the time for election, dispense with the necessity of filing an election in the court where the deceased husband's estate is being, or will be, administered, or dispense with the necessity of petitions for assignment of dower as formerly provided for in ss. 733.10 and 733.11. No dower shall be barred because of this section if the instrument was filed for record before January 1, 1973.

History.—s. 1, ch. 74-106; ss. 14, 15, ch. 75-220.
Note.—Created from former ss. 731.35 and 732.203.

732.214 Proceedings on the election.—On petition of the personal representative or the surviving spouse and after notice and hearing, the court shall determine the amount of the elective share and order its payment in cash or in kind within a time certain from the assets of the estate subject to the elective share. No distribution shall be required until 6 months from the date of death, when no federal estate tax return is required to be filed, or until the tax return is timely filed, when required. The order may provide for partial distributions. On petition of any interested party after notice, the court may suspend distribution of the elective share or any part of it until final settlement of the federal estate tax liability of the estate. Assets distributed in kind shall be distributed at fair market value on the date of distribution.

History.—s. 15, ch. 75-220.

732.215 Effect of elective share on taxes.—In any case in which the election of the elective share by the surviving spouse shall have the effect of increasing any estate, inheritance, or other death tax, the share of the surviving spouse shall bear the additional tax.

History.—s. 15, ch. 75-220.

732.216 Short title.—Sections 732.216-732.228 may be cited as the "Florida Uniform Disposition of Community Property Rights at Death Act."

History.—s. 4, ch. 92-200.

732.217 Application.—Sections 732.216-732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, wherever located, which:

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

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

(c) Is traceable to that community property.

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

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

(b) Is traceable to that community property.

History.—s. 5, ch. 92-200.

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

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which these sections apply.

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

History.—s. 6, ch. 92-200.

732.219 Disposition upon death.—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of the property is not subject to the surviving spouse's right to elect against the will.

History.—s. 7, ch. 92-200.

732.221 Perfection of title of personal representative, heir, or devisee.—If the title to any property to which ss. 732.216-732.228 apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover whether any property held by the surviving spouse is property to which these sections apply, unless a written demand is made by an heir, devisee, or creditor of the decedent within 6 months after the first publication of the notice of administration.

History.—s. 8, ch. 92-200.

732.222 Purchaser for value or lender.—

(1) If a surviving spouse has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated as the property transferred to the purchaser for value or a lender.

History.—s. 9, ch. 92-200.

732.223 Perfection of title of surviving spouse.—If the title to any property to which ss. 732.216-732.228 apply was held by the decedent at the time of his death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the probate court. The probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply. The personal representative has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply unless a written demand is made by the surviving spouse or the spouse's successor in interest within 6 months after the first publication of the notice of administration.

History.—s. 10, ch. 92-200.

732.224 Creditor's rights.—Sections 732.216-732.228 do not affect rights of creditors with respect to property to which ss. 732.216-732.228 apply.

History.—s. 11, ch. 92-200.

732.225 Acts of married persons.—Sections 732.216-732.228 do not prevent married persons from severing or altering their interests in property to which these sections apply. The reinvestment of any property to which these sections apply in real property located in this state which is or becomes homestead property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

History.—s. 12, ch. 92-200.

732.226 Limitations on testamentary disposition. Sections 732.216-732.228 do not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

History.—s. 13, ch. 92-200.

732.227 Homestead defined.—For purposes of ss. 732.216-732.228, the term "homestead" refers only to property the descent and devise of which is restricted by s. 4(c), Art. X of the State Constitution.

History.—s. 14, ch. 92-200.

732.228 Uniformity of application and construction. Sections 732.216-732.228 are to be so applied and construed as to effectuate their general purpose to make uniform the law with respect to the subject of these sections among those states which enact them.

History.—s. 15, ch. 92-200.

PART III

PRETERMITTED SPOUSE AND CHILDREN

732.301 Pretermitted spouse.
732.302 Pretermitted children.

732.301 Pretermitted spouse.—When a person marries after making a will and the spouse survives the testator, the surviving spouse shall receive a share in the estate of the testator equal in value to that which the surviving spouse would have received if the testator had died intestate, unless:

(1) Provision has been made for, or waived by, the spouse by prenuptial or postnuptial agreement;

(2) The spouse is provided for in the will; or

(3) The will discloses an intention not to make provision for the spouse.

The share of the estate that is assigned to the pretermitted spouse shall be obtained in accordance with s. 733.805.

History.—s. 1, ch. 74-106; s. 16, ch. 75-220; s. 9, ch. 77-87.
Note.—Created from former s. 731.10.

732.302 Pretermitted children.—When a testator omits to provide in his will for any of his children born or adopted after making the will and the child has not received a part of the testator's property equivalent to a child's part by way of advancement, the child shall receive a share of the estate equal in value to that he would have received if the testator had died intestate, unless:

(1) It appears from the will that the omission was intentional; or

(2) The testator had one or more children when the will was executed and devised substantially all his estate to the other parent of the pretermitted child.

The share of the estate that is assigned to the pretermitted child shall be obtained in accordance with s. 733.805.

History.—s. 1, ch. 74-106; s. 16, ch. 75-220.
Note.—Created from former s. 731.11.

PART IV

EXEMPT PROPERTY AND ALLOWANCES

732.401 Descent of homestead.
732.4015 Devise of homestead.
732.402 Exempt property.
732.403 Family allowance.

732.401 Descent of homestead.—

(1) If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent's death.

(2) If the decedent was domiciled in Florida and resided on real property that the decedent and the surviving spouse owned as tenants by the entirety, the real property shall not be homestead property.

History.—s. 1, ch. 74-106; s. 17, ch. 75-220.
Note.—Created from former s. 731.27.

732.4015 Devise of homestead.—

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except that the homestead may be devised to the owner's spouse if there is no minor child.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the settlor of a trust evidenced by a written instrument in existence at the time of the settlor's death pursuant to which the settlor retained the right either alone or in conjunction with any other person to amend or revoke the trust at any time before his death.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the settlor of the trust, would be the settlor's homestead.

History.—s. 1, ch. 74-106; ss. 18, 30, ch. 75-220; s. 16, ch. 92-200.

[1]732.402 Exempt property.—

(1) If a decedent was domiciled in this state at the time of death, the surviving spouse, or, if there is no surviving spouse, the children of the decedent shall have the right to a share of the estate of the decedent as provided in this section, to be designated "exempt property."

(2) Exempt property shall consist of:

(a) Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of $10,000 as of the date of death; and

(b) All automobiles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal automobiles.

(3) Exempt property shall be exempt from all claims against the estate except perfected security interests thereon.

(4) Exempt property shall be in addition to any property passing to the surviving spouse or heirs of the decedent under s. 4, Art. X of the State Constitution or the decedent's will, or by intestate succession, elective share, or family allowance.

(5) Property specifically or demonstratively devised by the decedent's will to any devisee shall not be included in exempt property. However, persons to whom property has been specifically or demonstratively devised and who would otherwise be entitled to it as exempt property under this section may have the court determine the property to be exempt from claims, except for perfected security interests thereon, after complying with the provisions of subsection (6).

(6) Persons entitled to exempt property shall be deemed to have waived their rights under this section unless a petition for determination of exempt property is filed by or on behalf of the persons entitled to the exempt property within 4 months after the date of the first publication of the notice of administration or within 40 days from the date of termination of any proceeding involving the construction, admission to probate, or validity of the will or involving any other matter affecting any part of the estate subject to this section.

History.—s. 1, ch. 74-106; s. 19, ch. 75-220; s. 10, ch. 77-87; s. 1, ch. 77-174; s. 1, ch. 81-238; s. 3, ch. 85-79; s. 67, ch. 87-226.

[1]**Note.**—Section 8, ch. 85-79, provides in pertinent part that with respect to s. 3, ch. 85-79, "the substantive rights of all persons which have vested prior to October 1, 1985, shall be determined as provided in s. 732.402, Florida Statutes, 1983."

Note.—Created from former s. 734.08.

732.403 Family allowance.—In addition to homestead and exempt property, if the decedent was domiciled in Florida at the time of his death, the surviving spouse and the decedent's lineal heirs whom the decedent was obligated to support or who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during administration. After notice and hearing, the court may order this allowance to be paid as a lump sum or in periodic installments. The allowance shall not exceed a total of $6,000. It shall be paid to the surviving spouse, if living, for the use of the spouse and dependent lineal heirs. If the surviving spouse is not living, it shall be paid to the lineal heirs or to the persons having their care and custody. If any lineal heir is not living with the surviving spouse, the allowance may be made partly to the lineal heir or his guardian or other person having his care and custody and partly to the surviving spouse, as the needs of the dependent lineal heir and the surviving spouse appear. The family allowance shall have the priority established by s. 733.707. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or to the dependent lineal heirs by intestate succession, elective share, or the will of the decedent, unless the will otherwise provides. The death of any person entitled to a family allowance terminates his right to the part of the allowance not paid. For purposes of this section, the term "lineal heir" or "lineal heirs" means lineal ascendants and lineal descendants of the decedent.

History.—s. 1, ch. 74-106; s. 19, ch. 75-220.

Note.—Created from former s. 733.20.

PART V

WILLS

732.501	Who may make a will.
732.502	Execution of wills.
732.503	Self-proof of will.
732.504	Who may witness.
732.505	Revocation by writing.
732.506	Revocation by act.
732.507	Effect of subsequent marriage, birth, or dissolution of marriage.
732.508	Revival by revocation.
732.509	Revocation of codicil.
732.5105	Republication of wills by codicil.
732.511	Republication of wills by reexecution.
732.512	Incorporation by reference.
732.513	Devises to trustee.
732.514	Vesting of devises.
732.515	Separate writing identifying devises of tangible property.
732.5165	Effect of fraud, duress, mistake, and undue influence.
732.517	Penalty clause for contest.
732.518	Will contests.

732.501 Who may make a will.—Any person 18 or more years of age who is of sound mind may make a will.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.

Note.—Created from former s. 731.04.

732.502 Execution of wills.—Every will must be in writing and executed as follows:

(1)(a) *Testator's signature.*—

1. The testator must sign the will at the end; or

2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by his direction.

(b) *Witnesses.*—The testator's:

1. Signing, or

2. Acknowledgment:

a. That he has previously signed the will, or

b. That another person has subscribed the testator's name to it,

must be in the presence of at least two attesting witnesses.

(c) *Witnesses' signatures.*—The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the testator was at the time of execution. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

(3) No particular form of words is necessary to the validity of a will if it is executed with the formalities required by law.

(4) A codicil shall be executed with the same formalities as a will.

History.—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 11, ch. 77-87.
Note.—Created from former s. 731.07.

732.503 Self-proof of will.—A will or codicil executed in conformity with s. 732.502(1) and (2) may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF ___
COUNTY OF ___

We, ___, ___, and ___ the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as his last will (codicil), that he (signed) (or directed another to sign for him), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

(Testator)
(Witness)
(Witness)

Subscribed and sworn to before me by ___, the testator a witness who is personally known to me or who has produced (type of identification) as identification, and by ___ a witness who is personally known to me or who has produced (type of identification) as identification and ___ a witness who is personally known to me or who has produced (type of identification) as identification, on ___, 19___.

(Signature of Notary Public)
(Print, type, or stamp commissioned name of Notary Public)
My Commission Expires: ___

History.—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 12, ch. 77-87; s. 8, ch. 93-62.
Note.—Created from former s. 731.071.

732.504 Who may witness.—

(1) Any person competent to be a witness may act as a witness to a will.

(2) A will or codicil, or any part of either, is not invalid because the will or codicil is signed by an interested witness.

History.—s. 1, ch. 74-106; s. 22, ch. 75-220; s. 1, ch. 77-174; s. 268, ch. 79-400.

732.505 Revocation by writing.—A will or codicil, or any part of either, is revoked:

(1) By a subsequent inconsistent will or codicil, even though the subsequent inconsistent will or codicil does not expressly revoke all previous wills or codicils, but the revocation extends only so far as the inconsistency exists.

(2) By a subsequent written will, codicil, or other writing declaring the revocation, if the same formalities required for the execution of wills are observed in the execution of the will, codicil, or other writing.

History.—s. 1, ch. 74-106; s. 23, ch. 75-220; s. 13, ch. 77-87; s. 269, ch. 79-400.
Note.—Created from former ss. 731.12, 731.13.

732.506 Revocation by act.—A will or codicil is revoked by the testator, or some other person in his presence and at his direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

History.—s. 1, ch. 74-106; s. 23, ch. 75-220.
Note.—Created from former s. 731.14.

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.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 90-23.
Note.—Created from former ss. 731.10, 731.101, 731.11.

732.508 Revival by revocation.—

(1) The revocation by the testator of a will that revokes a former will shall not revive the former will, even though the former will is in existence at the date of the revocation of the subsequent will.

(2) The revocation of a codicil to a will does not revoke the will, and, in the absence of evidence to the contrary, it shall be presumed that in revoking the codicil

the testator intended to reinstate the provisions of a will or codicil that were changed or revoked by the revoked codicil, as if the revoked codicil had never been executed.

History.—s. 1, ch. 74-106; s. 25, ch. 75-220.
Note.—Created from former s. 731.15.

732.509 Revocation of codicil.—The revocation of a will revokes all codicils to that will.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.
Note.—Created from former s. 731.16.

732.5105 Republication of wills by codicil.—The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.
Note.—Created from former s. 731.17.

732.511 Republication of wills by reexecution.—If a will has been revoked or if it is invalid for any other reason, it may be republished and made valid by its reexecution or the execution of a codicil republishing it with the formalities required by this law for the execution of wills.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.
Note.—Created from former s. 731.18.

732.512 Incorporation by reference.—

(1) A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

(2) A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will or trust by another person is such an event.

History.—s. 1, ch. 74-106; s. 27, ch. 75-220.

732.513 Devises to trustee.—

(1) A valid devise may be made to the trustee of a trust that is evidenced by a written instrument in existence at the time of making the will, or by a written instrument subscribed concurrently with making of the will, if the written instrument is identified in the will.

(2) The devise shall not be invalid for any or all of the following reasons:

(a) Because the trust is amendable or revocable, or both, by any person.

(b) Because the trust has been amended or revoked in part after execution of the will or a codicil to it.

(c) Because the trust instrument or any amendment to it was not executed in the manner required for wills.

(d) Because the only res of the trust is the possible expectancy of receiving, as a named beneficiary, a devise under a will or death benefits as described in s. 733.808, and even though the testator or other person has reserved any or all rights of ownership in such death benefit policy, contract, or plan, including the right to change the beneficiary.

(e) Because of any of the provisions of s. 689.075.

(3) The devise shall dispose of property under the terms of the instrument that created the trust as theretofore or thereafter amended.

(4) An entire revocation of the trust by an instrument in writing before the testator's death shall invalidate the devise or bequest.

(5) Unless the will provides otherwise, the property devised shall not be held under a testamentary trust of the testator but shall become a part of the principal of the trust to which it is devised.

(6) This section shall be cumulative to all laws touching upon the subject matter.

History.—s. 1, ch. 74-106; s. 3, ch. 75-74; s. 113, ch. 75-220; s. 2, ch. 88-340.
Note.—Created from former s. 736.17.

732.514 Vesting of devises.—The death of the testator is the event that vests the right to devises unless the testator in his will has provided that some other event must happen before a devise shall vest.

History.—s. 1, ch. 74-106; ss. 28, 113, ch. 75-220.
Note.—Created from former ss. 731.21 and 733.102.

732.515 Separate writing identifying devises of tangible property.—A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one in existence at the time of the testator's death. It may be prepared before or after the execution of the will. It may be altered by the testator after its preparation. It may be a writing that has no significance apart from its effect upon the dispositions made by the will.

History.—s. 1, ch. 74-106; s. 29, ch. 75-220.

732.5165 Effect of fraud, duress, mistake, and undue influence.—A will is void if the execution is procured by fraud, duress, mistake, or undue influence. Any part of the will is void if so procured, but the remainder of the will not so procured shall be valid if it is not invalid for other reasons.

History.—s. 31, ch. 75-220.

732.517 Penalty clause for contest.—A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.

732.518 Will contests.—An action to contest the validity of a will may not be commenced before the death of the testator.

History.—s. 17, ch. 92-200.

PART VI

RULES OF CONSTRUCTION

732.6005 Rules of construction and intention.
732.601 Simultaneous Death Law.
732.603 Antilapse; deceased devisee; class gifts.
732.604 Failure of testamentary provision.
732.605 Change in securities; accessions; nonademption.

732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.
732.607 Exercise of power of appointment.
732.608 Construction of generic terms.
732.609 Ademption by satisfaction.
732.611 Devises to be per stirpes.

732.6005 Rules of construction and intention.—

(1) The intention of the testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.

(2) Subject to the foregoing, a will is construed to pass all property which the testator owns at his death, including property acquired after the execution of the will.

History.—s. 1, ch. 74-106; ss. 33, 35, ch. 75-220.
Note.—Created from former ss. 732.41 and 732.602.

732.601 Simultaneous Death Law.—

(1) When title to property or its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this law.

(2) When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived.

(3) When there is insufficient evidence that two joint tenants or tenants by the entirety died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) When the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) This law shall not apply in the case of wills, living trusts, deeds, or contracts of insurance in which provision has been made for distribution of property different from the provisions of this law.

History.—s. 1, ch. 74-106; s. 34, ch. 75-220.
Note.—Created from former s. 736.05.

732.603 Antilapse; deceased devisee; class gifts. Unless a contrary intention appears in the will:

(1) If a devisee who is a grandparent, or a lineal descendant of a grandparent, of the testator:

(a) Is dead at the time of the execution of the will,

(b) Fails to survive the testator, or

(c) Is required by the will to be treated as if he predeceased the testator,

then the descendants of the devisee take per stirpes in place of the deceased devisee. A person who would have been a devisee under a class gift if he had survived the testator shall be a devisee for purposes of this section whether his death occurred before or after the execution of the will.

(2) If a devisee who is not a grandparent, or a descendant of a grandparent, of the testator:

(a) Is dead at the time of the execution of the will,

(b) Fails to survive the testator, or

(c) Is required by the will to be treated as if he predeceased the testator,

then the testamentary disposition to the devisee shall lapse unless an intention to substitute another in his place appears in the will.

History.—s. 1, ch. 74-106; s. 36, ch. 75-220.
Note.—Created from former s. 731.20.

732.604 Failure of testamentary provision.—

(1) Except as provided in s. 732.603, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in s. 732.603, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to the other residuary devisees in proportion to their interests in the residue.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.

732.605 Change in securities; accessions; nonademption.—

(1) If the testator intended a specific devise of certain securities rather than their equivalent value, the specific devisee is entitled only to:

(a) As much of the devised securities as is a part of the estate at the time of the testator's death.

(b) Any additional or other securities of the same entity owned by the testator because of action initiated by the entity, excluding any acquired by exercise of purchase options.

(c) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.

(2) Distributions before death of a specifically devised security not provided for in subsection (1) are not part of the specific devise.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.

732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.—

(1) If specifically devised property is sold by a guardian of the property for the care and maintenance of the ward or if a condemnation award or insurance proceeds are paid to a guardian of the property as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) Any balance of the purchase price owing from a purchaser to the testator at death because of sale of the property plus any security interest.

(b) Any amount of a condemnation award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on the property.

(d) Property owned by the testator at his death as a result of foreclosure, or obtained instead of foreclosure, of the security for the specifically devised obligation.

History.—s. 1, ch. 74-106; s. 38, ch. 75-220.

732.607 Exercise of power of appointment.—A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intent to include the property subject to the power.

History.—s. 1, ch. 74-106; s. 38, ch. 75-220.

732.608 Construction of generic terms.—Adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship, in accordance with rules for determining relationships for purposes of intestate succession.

History.—s. 1, ch. 74-106; s. 38, ch. 75-220.

732.609 Ademption by satisfaction.—Property that a testator gave to a person in the testator's lifetime is treated as a satisfaction of a devise to that person, in whole or in part, only if the will provides for deduction of the lifetime gift, the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purposes of part satisfaction, property given during the testator's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the testator, whichever occurs first.

History.—s. 1, ch. 74-106; s. 38, ch. 75-220.

732.611 Devises to be per stirpes.—Unless the will provides otherwise, all devises shall be per stirpes.

History.—s. 1, ch. 74-106; s. 38, ch. 75-220.

PART VII

CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

732.701 Agreements concerning succession.
732.702 Waiver of right to elect and of other rights.

732.701 Agreements concerning succession.—

(1) No agreement to make a will, to give a devise, not to revoke a will, not to revoke a devise, not to make a will, or not to make a devise shall be binding or enforceable unless the agreement is in writing and signed by the agreeing party in the presence of two attesting witnesses.

(2) The execution of a joint will or mutual wills neither creates a presumption of a contract to make a will nor creates a presumption of a contract not to revoke the will or wills.

History.—s. 1, ch. 74-106; s. 39, ch. 75-220.

Note.—Created from former s. 731.051.

732.702 Waiver of right to elect and of other rights.

(1) The right of election of a surviving spouse, the rights of the surviving spouse as intestate successor or as a pretermitted spouse, and the rights of the surviving spouse to homestead, exempt property, and family allowance, or any of them, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead property, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to either from the other by intestate succession or by the provisions of any will executed before the waiver or property settlement.

(2) Each spouse shall make a fair disclosure to the other of his or her estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage.

(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity, whether executed before or after marriage.

History.—s. 1, ch. 74-106; s. 39, ch. 75-220; s. 14, ch. 77-87.

PART VIII

GENERAL PROVISIONS

732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.
732.802 Killer not entitled to receive property or other benefits by reason of victim's death.
732.804 Provisions relating to cremation.

732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Beneficiary" means a person who would succeed to an interest in property in any manner described in subsection (2).

(b) "Decedent" means the person by whom an interest in property was created or from whom it would have been received by a beneficiary.

(c) "Power of appointment" means any power described in subparagraph (d)3.

(d) An "interest in property" that may be disclaimed shall include:

1. The whole of any property, real or personal, legal or equitable, present or future interest, or any fractional part, share, or portion of property or specific assets thereof.

2. Any estate in the property.

3. Any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to it.

(2) SCOPE OF RIGHT TO DISCLAIM.—

(a) A beneficiary may disclaim his succession to any interest in property that, unless disclaimed, would pass to the beneficiary:

1. By intestate succession or devise.

2. Under descent of homestead, exempt property, or family allowance or under s. 222.13.

3. Through exercise or nonexercise of a power of appointment exercisable by will.

4. Through testamentary exercise or nonexercise of a power of appointment exercisable by either deed or will.

5. As beneficiary of a testamentary trust.

6. As a beneficiary of a testamentary gift to any nontestamentary trust.

7. As donee of a power of appointment created by will.

8. By succession in any manner described in this subsection to a disclaimed interest.

9. In any manner not specifically enumerated herein under a testamentary instrument.

(b) Disclaimer may be made for a minor, incompetent, incapacitated person, or deceased beneficiary by the guardian or personal representative if the court having jurisdiction of the estate of the minor, incompetent, incapacitated person, or deceased beneficiary finds that the disclaimer:

1. Is in the best interests of those interested in the estate of the beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and

2. Is not detrimental to the best interests of the beneficiary.

The determination shall be made on a petition filed for that purpose and served on all interested persons. If ordered by the court, the guardian or personal representative shall execute and record the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if he were living, of legal age, and competent.

(3) DISPOSITION OF DISCLAIMED INTERESTS.—

(a) Unless the decedent or a donee of a power of appointment has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that caused him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity. The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or other event. An interest in property disclaimed shall never vest in the disclaimant. If the provisions of s. 732.603 would have been applicable had the disclaimant in fact died immediately preceding the death or other event, they shall be applicable to the disclaimed interest.

(b) Unless his disclaimer instrument so provides, a beneficiary who disclaims any interest that would pass to him in any manner described in subsection (2) shall not be excluded from sharing in any other interest to which he may be entitled in any manner described in the subsection, including subparagraph (2)(a)8., even though the interest includes disclaimed assets by virtue of the beneficiary's disclaimer.

(4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER INSTRUMENTS.—

(a) To be a disclaimer, a writing shall declare the disclaimer and its extent, describe the interest in property disclaimed, and be signed, witnessed, and acknowledged in the manner provided for the conveyance of real property.

(b) A disclaimer shall be effective and irrevocable when the instrument is recorded by the clerk where the estate of the decedent is or has been administered. If no administration has been commenced, recording may be made with the clerk of any county where venue of administration is proper.

(c) The person disclaiming shall deliver or mail a copy of the disclaimer instrument to the personal representative, trustee, or other person having legal title to, or possession of, the property in which the disclaimed interest exists. No representative, trustee, or other person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is waived or barred as hereinafter provided, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual notice of the facts constituting the waiver or barring the right to disclaim.

(5) TIME FOR RECORDING DISCLAIMER.—A disclaimer shall be recorded at any time after the creation of the interest, but in any event within 9 months after the event giving rise to the right to disclaim, including the death of the decedent; or, if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity at the death of the decedent, then the disclaimer shall be recorded not later than 6 months after the event that would cause him to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity. However, a disclaimer may be recorded at any time after the creation of the interest, upon the written consent of all interested parties as provided in s. 731.302.

(6) WAIVER OR BAR TO RIGHT TO DISCLAIM.—

(a) The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim and also by:

1. Making a voluntary assignment or transfer of, a contract to assign or transfer, or an encumbrance of, an interest in real or personal property.

2. Giving a written waiver of the right to disclaim the succession to an interest in real or personal property.

3. Making any sale or other disposition of an interest in real or personal property pursuant to judicial process by the beneficiary before he has recorded a disclaimer.

(b) The acceptance, assignment, transfer, encumbrance, or written waiver of the right to disclaim a part of an interest in property, or the sale pursuant to judicial process of a part of an interest in property, shall not bar the right to disclaim any other part of the interest in property.

(7) EFFECT OF RESTRAINTS.—The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction.

(8) RIGHT TO DISCLAIM UNDER OTHER LAW NOT ABRIDGED.—This law shall not abridge the right of any person to disclaim, renounce, alienate, release, or otherwise transfer or dispose of any interest in property under any other existing or future law.

History.—s. 1, ch. 74-106; s. 40, ch. 75-220; s. 15, ch. 77-87.
Note.—Created from former s. 731.37.

732.802 Killer not entitled to receive property or other benefits by reason of victim's death.—

(1) A surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of coownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of murder in any degree is conclusive for purposes of this section. In the absence of a conviction of murder in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 1, ch. 82-71.
Note.—Created from former s. 731.31.

732.804 Provisions relating to cremation.—The fact that cremation occurred pursuant to a provision of a will or any written contract signed by the decedent in which he expressed his intent that his body be cremated is a complete defense to a cause of action against the personal representative or person providing the services.

History.—s. 1, ch. 74-106; s. 43, ch. 75-220.

PART IX

PRODUCTION OF WILLS

732.901 Production of wills.

732.901 Production of wills.—

(1) The custodian of a will must deposit the will with the clerk of the court having venue of the estate of the decedent within 10 days after receiving information that the testator is dead. The custodian must supply the testator's date of death or social security number to the clerk upon deposit. Willful failure to deposit the will with the clerk within the time period specified shall render the custodian responsible for all costs and damages sustained by anyone if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.

(2) By petition and notice of it served on him, the custodian of any will may be compelled to produce and deposit the will as provided in subsection (1). All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.

History.—s. 1, ch. 74-106; s. 44, ch. 75-220; s. 18, ch. 92-200.
Note.—Created from former s. 732.22.

PART X

ANATOMICAL GIFTS

732.910 Legislative declaration.
732.911 Definitions.
732.912 Persons who may make an anatomical gift.
732.913 Persons who may become donees; purposes for which anatomical gifts may be made.
732.914 Manner of executing anatomical gifts.
732.915 Delivery of document; organ and tissue donor registry.
732.916 Amendment or revocation of the gift.
732.917 Rights and duties at death.
732.918 Eye banks.
732.9185 Corneal removal by medical examiners.
732.919 Enucleation of eyes by licensed funeral directors.
732.921 Donations as part of driver license or identification card process.

732.9215 Education program relating to anatomical gifts.
732.92155 Florida Organ and Tissue Donor Education Trust Fund.
732.9216 Organ and tissue donor education panel.
732.922 Duty of certain hospital administrators.

732.910 Legislative declaration.—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the medical developments in these fields, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and postmortem authorizations for donations of tissue and organs. It is the purpose of this part to regulate the gift of a body or parts of a body, the gift to be made after the death of a donor.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 84-264.
Note.—Created from former s. 736.21.

732.911 Definitions.—For the purpose of this part:

(1) "Bank" or "storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Donor" means an individual who makes a gift of all or part of his body.

(3) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.

(4) "Physician" or "surgeon" means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. "Surgeon" includes dental or oral surgeon.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220.
Note.—Created from former s. 736.22.

732.912 Persons who may make an anatomical gift.—

(1) Any person who may make a will may give all or part of his body for any purpose specified in s. 732.910, the gift to take effect upon death. An anatomical gift made by an adult [1]and not revoked by the donor as provided in s. 732.916 is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(2) In the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, any of the following persons may give all or any part of the decedent's body for any purpose specified in s. 732.910:

(a) The spouse of the decedent;
(b) An adult son or daughter of the decedent;
(c) Either parent of the decedent;
(d) An adult brother or sister of the decedent;
(e) A grandparent of the decedent;
(f) A guardian of the person of the decedent at the time of his death; or
(g) A representative ad litem who shall be appointed by a court of competent jurisdiction forthwith upon a petition heard ex parte filed by any person, which representative ad litem shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his body or body parts not be donated upon death;

but no gift shall be made by the spouse if any adult son or daughter objects, and provided that those of higher priority, if they are reasonably available, have been contacted and made aware of the proposed gift, and further provided that a reasonable search is made to show that there would have been no objection on religious grounds by the decedent.

(3) If the donee has actual notice of contrary indications by the decedent or objection of an adult son or daughter or actual notice that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(4) The person authorized by subsection (2) may make the gift after the decedent's death or immediately before the decedent's death.

(5) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(6) The rights of the donee created by the gift are paramount to the rights of others, except as provided by s. 732.917.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 84-264; s. 62, ch. 85-62; s. 5, ch. 95-423.
[1]**Note.**—The word "and" was substituted for the words "that is" by the editors.
Note.—Created from former s. 736.23.

732.913 Persons who may become donees; purposes for which anatomical gifts may be made.—The following persons may become donees of gifts of bodies or parts of them for the purposes stated:

(1) Any hospital, surgeon, or physician for medical or dental education or research, advancement of medical or dental science, therapy, or transplantation.

(2) Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

(4) Any individual specified by name for therapy or transplantation needed by him.

However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 94-305.
Note.—Created from former s. 736.24.

732.914 Manner of executing anatomical gifts.—

(1) A gift of all or part of the body under s. 732.912(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

(2)(a) A gift of all or part of the body under s. 732.912(1) may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document must be signed by the donor in the presence of two witnesses who shall sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence and the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(b) The following form of written instrument shall be sufficient for any person to give all or part of his body for the purposes of this part:

UNIFORM DONOR CARD

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:
I give:

(a) ____ any needed organs or parts;

(b) ____ only the following organs or parts

[Specify the organ(s) or part(s)]

for the purpose of transplantation, therapy, medical research, or education;

(c) ____ my body for anatomical study if needed.

Limitations or special wishes, if any:

(If applicable, list specific donee)

Signed by the donor and the following witnesses in the presence of each other:

(Signature of donor) (Date of birth of donor)

(Date signed) (City and State)

(Witness) (Witness)

(Address) (Address)

(3) The gift may be made to a donee specified by name. If the donee is not specified by name, the gift may be accepted by the attending physician as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee upon or following death in the absence of any expressed indication that the donor desired otherwise. However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(4) Notwithstanding s. 732.917(2), the donor may designate in his will or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(5) Any gift by a person designated in s. 732.912(2) shall be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 83-171; s. 2, ch. 94-305; s. 6, ch. 95-423.

Note.—Created from former s. 736.25.

732.915 Delivery of document; organ and tissue donor registry.—

(1) If a gift is made through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. 732.921, the completed donor registration card shall be delivered to the Department of Highway Safety and Motor Vehicles and processed in a manner specified in subsection (4), but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the Department of Highway Safety and Motor Vehicles shall be updated to reflect such withdrawal.

(2) If a gift is not made through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. 732.921 and is made by the donor to a specified donee, the document, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. Such document may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or for facilitation of procedures after death.

(3) On the request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(4) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement an organ and tissue donor registry which shall record, through electronic means, organ and tissue donation documents submitted through the driver license identification program or by other sources. The registry shall be maintained in a manner which will allow, through electronic and telephonic methods, immediate access to organ and tissue donation documents 24 hours a day, 7 days a week. Hospitals, organ and tissue procurement agencies, and other parties identified by the agency by rule shall be allowed access through coded means to the information stored in the registry. Total startup costs for the organ and tissue donor registry shall be funded by up to 40 percent of the total funds deposited into the Florida Organ and Tissue Donor Education Trust Fund, ¹if created by law, otherwise into the General Revenue Fund, for organ and tissue donor education, by the end of the first year of implementation of the collection process. Annually thereafter, an amount up to 20 percent of the total funds deposited into the Florida Organ and Tissue Donor Education Trust Fund, ¹if created by law, otherwise into the General Revenue Fund, for organ and tissue donor education, shall be utilized by the Agency for Health Care Administration for maintaining the organ and tissue donor registry. The Agency for Health Care Administration shall levy an annual assessment against each regis-

tered organ procurement organization, tissue bank, and eye bank, based on the methodology set out in s. 381.6024 for the purpose of maintaining the organ and tissue donor registry. The combined total assessments levied upon all organ procurement organizations, tissue banks, and eye banks shall not exceed $30,000 annually.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 2, ch. 83-171; s. 1, ch. 87-372; s. 7, ch. 95-423.

[1]**Note.**—The Florida Organ and Tissue Donor Education Trust Fund was created by s. 732.92155.

Note.—Created from former s. 736.26.

732.916 Amendment or revocation of the gift.—

(1) If the will or other document authorized under the provisions of s. 732.915(2) has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) The execution and delivery to the donee of a signed statement.

(b) An oral statement that is:

1. Made to the donor's spouse; or

2. Made in the presence of two persons and communicated to the donor's family or attorney or to the donee.

(c) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.

(d) A signed document found on his person or in his effects.

(2) A document of gift that has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) or by destruction, cancellation, or mutilation of the document.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (1).

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 83-171; s. 8, ch. 95-423.

Note.—Created from former s. 736.27.

732.917 Rights and duties at death.—

(1) The donee, as specified under the provisions of s. 732.915(2), may accept or reject the gift. If the donee accepts a gift of the entire body or a part of the body to be used for scientific purposes other than a transplant, the donee may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at the donor's death or, if there is no such physician, the physician who certifies the death. After death and in the absence of other qualified personnel, this physician may participate in, but shall not obstruct, the procedures to preserve the donor's organs or tissues and shall not be paid or reimbursed by, nor be associated with or employed by, an organ procurement organization, tissue bank, or eye bank. This physician shall not participate in the procedures for removing or transplanting a part.

(3) The organ procurement organization, tissue bank, or eye bank, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor's organs. These procedures do not include the surgical removal of an organ or penetrating any body cavity, specifically for the purpose of donation, until a properly executed donor card or document is located or, if a properly executed donor card or document cannot be located, a person specified in s. 732.912(2) has been located, has been notified of the death, and has granted legal permission for the donation.

(4) All reasonable additional expenses incurred in the procedures to preserve the donor's organs or tissues shall be reimbursed by the organ procurement organization, tissue bank, or eye bank.

(5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution for his acts in any criminal proceeding.

(6) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 83-171; s. 9, ch. 95-423.

Note.—Created from former s. 736.28.

732.918 Eye banks.—

(1) Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.

(2) The Department of Education may have prepared, printed, and distributed:

(a) A form document of gift for a gift of the eyes.

(b) An eye bank register consisting of the names of persons who have executed documents for the gift of their eyes.

(c) Wallet cards reciting the document of gift.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 462, ch. 77-147.

Note.—Created from former s. 736.29.

732.9185 Corneal removal by medical examiners.

(1) In any case in which a patient is in need of corneal tissue for a transplant, a district medical examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 732.918, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the district medical examiner nor his appropriately qualified designee nor any eye bank authorized under s. 732.918 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

History.—s. 1, ch. 77-172; s. 1, ch. 78-191.

732.919 Enucleation of eyes by licensed funeral directors.—With respect to a gift of an eye as provided for in this part, a licensed funeral director as defined in chapter 470 who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Florida School of Medicine, the University of South Florida School of Medicine, or the University of Miami School of Medicine may enucleate eyes for gift after proper certification of death by a physician and in compliance with the intent of the gift as defined in this chapter. No properly certified funeral director acting in accordance with the terms of this part shall have any civil or criminal liability for eye enucleation.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 80-157.
Note.—Created from former s. 736.31.

732.921 Donations as part of driver license or identification card process.—

(1) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement a program encouraging and allowing persons to make anatomical gifts as a part of the process of issuing identification cards and issuing and renewing driver licenses. The donor registration card distributed by the Department of Highway Safety and Motor Vehicles shall include the material specified by s. 732.914(2)(b) and may require such additional information, and include such additional material, as may be deemed necessary by that department. The Department of Highway Safety and Motor Vehicles shall also develop and implement a program to identify donors, which program shall include notations on identification cards, driver licenses, and driver records or such other methods as the department may develop. This program shall include, after an individual has completed a donor registration card, making a notation on the front of the driver license or identification card that clearly indicates the individual's intent to donate the individual's organs or tissue. A notation on an individual's driver license or identification card that the individual intends to donate organs or tissues is deemed sufficient to satisfy all requirements for consent to organ or tissue donation. The Agency for Health Care Administration shall provide the necessary supplies and forms through funds appropriated from general revenue or contributions from interested voluntary, nonprofit organizations. The Department of Highway Safety and Motor Vehicles shall provide the necessary recordkeeping system through funds appropriated from general revenue. The Department of Highway Safety and Motor Vehicles and the Agency for Health Care Administration shall incur no liability in connection with the performance of any acts authorized herein.

(2) The Department of Highway Safety and Motor Vehicles, after consultation with and concurrence by the Agency for Health Care Administration, shall adopt rules to implement the provisions of this section according to the provisions of chapter 120.

(3) Funds expended by the Agency for Health Care Administration to carry out the intent of this section shall not be taken from any funds appropriated for patient care.

History.—s. 1, ch. 75-71; s. 1, ch. 77-16; s. 463, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 80-134; s. 5, ch. 83-171; s. 10, ch. 95-423.

732.9215 Education program relating to anatomical gifts.—The Agency for Health Care Administration, subject to the concurrence of the Department of Highway Safety and Motor Vehicles, shall develop a continuing program to educate and inform medical professionals, law enforcement agencies and officers, high school children, state and local government employees, and the public regarding the laws of this state relating to anatomical gifts and the need for anatomical gifts.

(1) The program is to be implemented with the assistance of the organ and tissue donor education panel as provided in s. 732.9216 and with the funds collected under ss. 320.08047 and 322.08(7)(b). Existing community resources, when available, must be used to support the program, and volunteers may assist the program to the maximum extent possible. The Agency for Health Care Administration may contract for the provision of all or any portion of the program. When awarding such contract, the agency shall give priority to existing nonprofit groups that are located within the community, including within the minority communities specified in subsection (2). The program aimed at educating medical professionals may be implemented by contract with one or more medical schools located in the state.

(2) The Legislature finds that particular difficulties exist in making members of the various minority communities within the state aware of laws relating to anatomical gifts and the need for anatomical gifts. Therefore, the program shall include, as a demonstration project, activities especially targeted at providing such information to the nonwhite, Hispanic, and Caribbean populations of the state.

(3) The Agency for Health Care Administration shall, no later than March 1 of each year, submit a report to the Legislature containing statistical data on the effectiveness of the program in procuring donor organs and the effect of the program on state spending for health care.

(4) The Agency for Health Care Administration, in furtherance of its educational responsibilities regarding organ and tissue donation, shall have access to the buildings and workplace areas of all state agencies and political subdivisions of the state.

History.—s. 1, ch. 85-247; s. 11, ch. 95-423.

[1]732.92155 Florida Organ and Tissue Donor Education Trust Fund.—The Florida Organ and Tissue Donor Education Trust Fund is hereby created, to be administered by the Agency for Health Care Administration. Funds shall be credited to the trust fund as provided in [2]HB or similar legislation, to be used for the purposes set forth therein.

History.—s. 1, ch. 95-316.
[1]Note.—Section 2, ch. 95-316, provides that:
"(1) The Florida Organ and Tissue Donor Education Trust Fund shall be terminated on July 1, 1999.
"(2) Prior to the regular legislative session immediately preceding the date on which the trust fund is scheduled to be terminated, the Agency for Health Care Administration and the Governor shall recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created. These recommendations shall be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund. The agency's recommendation shall be made as a part of its legislative budget request to the Legislature pursuant to s. 216.023, Florida Statutes. The Governor's recommendation shall be made as a part of the recommended budget presented to the Legislature pursuant to s. 216.162, Florida Statutes.

"(3) If the trust fund is terminated, the agency shall pay any outstanding debts or obligations of the trust fund as soon as practicable and the Comptroller shall close out and remove the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities."

[2]**Note.**—As enacted by s. 1, ch. 95-316; this language appeared without reference to a specific bill in original H.B. 2447, and continued as such in the version that became ch. 95-316. House bill 2445, which became ch. 95-423, provides for deposit of moneys into the fund, if created by law.

732.9216 Organ and tissue donor education panel.—

(1) The Legislature recognizes that there exists in the state a shortage of organ and tissue donors to provide the organs and tissue that could save lives or enhance the quality of life for many Floridians. The Legislature further recognizes the need to encourage the various minority populations of Florida to donate organs and tissue. It is the intent of the Legislature that the funds collected pursuant to s. 322.08(7)(b) be used exclusively for educational purposes aimed at increasing the number of organ and tissue donors, thus affording more Floridians who are awaiting organ or tissue transplants the opportunity for a full and productive life.

(2) There is created within the Agency for Health Care Administration a statewide organ and tissue donor education panel, consisting of 12 members, to represent the interests of the public with regard to increasing the number of organ and tissue donors within the state. The panel and the Organ and Tissue Procurement and Transplantation Advisory Board established in s. 381.6023 shall jointly develop, subject to the approval of the Agency for Health Care Administration, education initiatives pursuant to s. 732.9215, which the agency shall implement. The membership must be balanced with respect to gender, ethnicity, and other demographic characteristics so that the appointees reflect the diversity of the population of this state. The panel members must include:

(a) A representative from the Agency for Health Care Administration, who shall serve as chairperson of the panel.

(b) A representative from a Florida licensed organ procurement organization.

(c) A representative from a Florida licensed tissue bank.

(d) A representative from a Florida licensed eye bank.

(e) A representative from a Florida licensed hospital.

(f) A representative from the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles, who possesses experience and knowledge in dealing with the public.

(g) A representative from the family of an organ, tissue, or eye donor.

(h) A representative who has been the recipient of a transplanted organ, tissue, or eye, or is a family member of a recipient.

(i) A representative who is a minority person as defined in s. 381.81.

(j) A representative from a professional association or public relations or advertising organization.

(k) A representative from a community service club or organization.

(l) A representative from the Department of Education.

(3) All members of the panel shall be appointed by the Director of Health Care Administration to serve a term of 2 years, except that, initially, six members shall be appointed for 1-year terms and six members shall be appointed for 2-year terms.

(4) Members of the panel shall receive no compensation but shall be reimbursed for per diem and travel expenses by the agency in accordance with the provisions of s. 112.061, while engaged in the performance of their duties.

(5) The panel shall meet at least semiannually or upon the call of the chairperson or the Director of Health Care Administration.

History.—s. 12, ch. 95-423.

732.922 Duty of certain hospital administrators.—

(1) When used in this section, "hospital" means any establishment licensed under chapter 395 except psychiatric and rehabilitation hospitals.

(2) Where, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or his designee shall, at or near the time of death, access the organ and tissue donor registry created by s. 732.915(4) to ascertain the existence of a donor card document executed by the decedent. In the absence of a donor card or document, the hospital administrator or designee shall request any of the persons specified in s. 732.912, in the order and manner of priority stated in s. 732.912, to consent to the gift of all or any part of the decedent's body for any purpose specified in this part. Except as provided in s. 732.912, in the absence of actual notice of opposition, consent or refusal need only be obtained from the person or persons in the highest priority class available.

(3) A gift made pursuant to a request required by this section shall be executed pursuant to s. 732.914.

(4) The Agency for Health Care Administration shall establish rules and guidelines concerning the education of individuals who may be designated to perform the request and the procedures to be used in making the request. The agency is authorized to adopt rules concerning the documentation of the request, where such request is made.

(5) No recovery shall be allowed nor shall civil or criminal proceedings be instituted in any court in this state against the licensed hospital or the hospital administrator or his designee when, in his best judgment, he deems such a request for organ donation to be inappropriate according to the procedures established by the Agency for Health Care Administration, or he has made every reasonable effort to comply with the provisions of this section.

History.—s. 1, ch. 86-212; s. 2, ch. 87-372; s. 13, ch. 95-423.