

KEY MAY 2010 FLORIDA PROBATE LAW CHANGES

1 Fla.Stats. § 655.935 - Safe Deposit Boxes

1.1 Lessor may have obligation to gather information and copies regarding items removed from the decedent's safe deposit box.

1.2 COMMENT: Helpful to avoid cases of "disappearing dispositive documents."

2 Fla.Stats. § 731.110 - Caveats

2.1 Provides noncreditors may file caveats prior to death, subject to 2 year expiration period.

2.2 COMMENT: A procedural break to noncreditors.

3 Fla.Stats. § 731.201 - Notice

3.1 Clarification of formal and informal notice definitions by reference to particular Probate Rules.

3.2 COMMENT: Clarification is always a good thing.

4 Fla.Stats. § 732.401 - Surviving Spouse Interest in Homestead

4.1 In lieu of receiving a life estate in homestead that is improperly or not devised, the surviving spouse may elect to receive a 50% tenants in common interest (with the other 50% vesting in the decedent's descendants).

4.2 6 month election period.

4.3 Election filed in real property records.

4.4 Disclaimer of surviving spouse's interest in homestead will not act to divest statutory remaindermen of their interest.

4.5 Fla.Stats. § 732.4015 directs that disclaimed spousal interest passes in accordance with Chapter 739 (Fla.Stats. § 732.4015).

4.6 COMMENT: Useful method to reducing conflicts between surviving spouse and decedent's descendants, especially if descendants are not lineals of the surviving spouse.

5 Fla.Stats. § 732.4017 - Lifetime Homestead Transfers

5.1 Irrevocable inter vivos transfers will be respected as such and will not be treated as testamentary transfers subject to restrictions on devises.

5.2 Such transfers include transfers in trust, and transfers when transferor retains rights in the property or transfers are subject to contingencies.

5.3 COMMENT: Useful in avoiding arguments that irrevocable inter vivos transfers will not be subject to testamentary homestead restrictions.

6 Fla.Stats. § 732.805 - Marriage Obtained by Fraud, Duress, or Undue Influence

6.1 Surviving spouse will not have listed marital rights, including rights under the Probate Code.

6.2 COMMENT: Having seen too many instances of fraudulent marriages of elder persons, this is a good thing. The litigators will like this, too.

7 Fla.Stats. § 733.1051 - Revisions of Wills for 2010 Decedents

7.1 Provides a procedure for court review and revision of Wills with dispositive provisions that are affected by repeal of estate tax in 2010.

7.2 COMMENT: I preferred some of the other approaches that treated the decedent as having died on 12/31/09. This one requires litigation, and may require having draftsman declare their own errors to obtain relief.

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