

A bill to be entitled

An act relating to the disposition of certain assets at death; creating s.732.703, F.S.; providing a rebuttable presumption that in the event of a divorce or judicial proceeding determining a marriage to be invalid prior to a decedent's death, the decedent did not intend for the former spouse to inherit certain assets in the event that the decedent did not remove the former spouse as the primary beneficiary of such assets prior to death; providing a list of assets to be included under the statute, including insurance policies, annuities, employee benefit plans, individual retirement accounts, pay-on-death accounts and transfer-on-death accounts; providing certain exceptions to the presumption, including but not limited to situations where controlling federal law applies, a beneficiary designation made after the date of the order of dissolution or order determining invalidity, an asset whose disposition is governed by a will or trust, to the extent that a court order requires that the asset be maintained with a certain beneficiary designation, to the extent that the decedent could not have unilaterally changed the beneficiary designation, to the extent that the laws of a state other than Florida apply, to the extent that the asset is held in joint name, and in the event that the decedent remarried the former spouse and they were married at the time of the decedent's death; providing a means for a financial institution to determine the correct payee for certain assets depending upon information contained on the death certificate, or in the alternative, providing an affidavit for execution by the primary beneficiary claiming to be the spouse of the decedent or the contingent beneficiary claiming that the decedent was not married at the time of death; providing an effective date.

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

RM:6853107:1

Section 1. Section 732.703, Florida Statutes, is created to read:

732.703 Effect of divorce, dissolution or invalidity of marriage on disposition of certain assets at death. --

(1) As used in this section, unless the context requires to the contrary:

(a) “asset,” when not modified by other words or phrases, means an asset described in subsection (3).

(b) “beneficiary” means any person designated in the governing instrument to receive an interest in an asset upon the death of the decedent.

(c) “contingent beneficiary” means a beneficiary designated under the governing instrument who will receive an interest if the designation of the primary beneficiary is revoked or otherwise lapses.

(d) “death certificate” means a certified copy of a death certificate issued by an official or agency for the place where the decedent’s death occurred.

(e) “governing instrument” means any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent.

(f) “payor” means any person obligated to make payment of the decedent’s interest in an asset upon the death of the decedent, and any other person who is in control or possession of an asset.

(g) “primary beneficiary” means a beneficiary designated under the governing instrument to receive an interest in an asset upon the death of the decedent who is not a contingent beneficiary. A person who receives an interest in the asset upon the death of the

RM:6853107:1

decedent due to the death of another beneficiary prior to the decedent's death is also a
 "primary beneficiary."

(2) A designation made by or on behalf of the decedent providing for the payment or
 transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse
 is revoked if the decedent's marriage was judicially dissolved or declared invalid by court
 order prior to the decedent's death, and such designation was made prior to the date of such
 dissolution or court order. The decedent's interest in the asset shall pass as if the decedent's
 former spouse predeceased the decedent. An individual retirement account described in
 Section 408 or 408A of the Internal Revenue Code of 1986, or an employee benefit plan, shall
 not be treated as a trust for purposes of this section.

(3) Subsection (2) shall apply to the following assets in which a Florida resident has an
 interest at the time of the resident's death:

(a) A life insurance policy, annuity or other similar contract;

(b) An employee benefit plan, which, for purposes of this section, is any
 funded or unfunded plan, program or fund established to provide an employee's beneficiaries
 with benefits that may be payable on the employee's death;

(c) An individual retirement account described in Section 408 or 408A of the
 Internal Revenue Code of 1986;

(d) A payable-on-death account; or

(e) A security or other account registered in transfer-on-death form.

65 (4) Subsection (2) shall not apply:

66 (a) To the extent that controlling federal law provides otherwise;

67 (b) If the governing instrument is signed by the decedent, or on behalf of the
68 decedent, after the date of the order of dissolution or order declaring the marriage
69 invalid, and such governing instrument expressly provides that benefits will be payable
70 to the decedent's former spouse.

71 (c) To the extent a trust or will governs the disposition of the assets; _____

72 (d) If the order of dissolution or order declaring the marriage invalid requires
73 that the decedent acquire or maintain the asset for the benefit of a former spouse or
74 children of the marriage, payable upon the death of the decedent either outright or in
75 trust, only if other assets of the decedent fulfilling such a requirement for the benefit of
76 the former spouse or children of the marriage do not exist upon the death of the
77 decedent;

78 (e) If, under the terms of the order of dissolution or order declaring the marriage
79 invalid, the decedent could not have unilaterally terminated or modified the ownership
80 of the asset, or its disposition upon the death of the decedent;

81 (f) If the instrument directing the disposition of the asset at death is governed by
82 the laws of a state other than Florida;

83 (g) To an asset held in two or more names as to which the death of one co-
84 owner vests ownership of the asset in the surviving co-owner or co-owners; or

85 (h) If the decedent remarries the person whose interest would otherwise have
86 been revoked hereunder and the decedent and that person are married to one another at
87 the time of the decedent's death.

88 (5) In the case of an asset described in subsection (3)(a), (b) or (c), unless payment
89 or transfer would violate a court order directed to, and served as required by law on the
90 payor:

91 (a) If the governing instrument does not explicitly specify the relationship of
92 the beneficiary to the decedent, or if the governing instrument explicitly provides that
93 the beneficiary is not the decedent's spouse, the payor is not liable for making any
94 payment on account of, or transferring any interest in, the asset to the beneficiary.

95 (b) As to any portion of the asset required by the governing instrument to be
96 paid after the decedent's death to a primary beneficiary explicitly designated in the
97 governing instrument as the decedent's spouse:

98 1. If the death certificate states that the decedent was married at the time
99 of his or her death to that spouse, the payor is not liable for making a payment
100 on account of, or for transferring an interest in, that portion of the asset to such
101 primary beneficiary.

102 2. If the death certificate states that the decedent was not married at the
103 time of his or her death, or if the death certificate states that the decedent was
104 married to a person other than the spouse designated as the primary beneficiary
105 at the time of his or her death, the payor is not liable for making a payment on

account of, or for transferring an interest in, that portion of the asset to a
contingent beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent's marital status at
the time of his or her death, the payor is not liable for making a payment on
account of, or for transferring an interest in, that portion of the asset to the
primary beneficiary upon delivery to the payor of an affidavit validly executed
by the primary beneficiary in substantially the following form:

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared (name of
affiant) ("Affiant"), who swore or affirmed that:

1. (Name of decedent) ("Decedent") died on (date).

2. Affiant is a "primary beneficiary" as that term is defined in Section
732.703(1)(f), Florida Statutes. Affiant and Decedent were married on (date of
marriage), and were legally married to one another on the date of the
Decedent's death.

 _____ (Affiant)

Sworn to (or affirmed) and subscribed before me this ____ day of (month),
(year), by (name of person making statement)

(Signature of Notary Public-State of _____)

(Print, Type or Stamp Commissioned name of Notary Public)

Personally known OR Produced Identification) (Type of Identification
Produced).

4. If the death certificate is silent as to the decedent's marital
status at the time of his or her death, the payor is not liable for making a
payment on account of, or for transferring an interest in, that portion of
the asset to the contingent beneficiary upon delivery to the payor of an
affidavit validly executed by the contingent beneficiary affidavit in
substantially the following form:

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared (name of
affiant) ("Affiant"), who swore or affirmed that:

1. (Name of decedent) ("Decedent") died on (date).

2. Affiant is a "contingent beneficiary" as that term is defined in Section
732.703(1)(g), Florida Statutes. On the date of the Decedent's death, the

Decedent was not legally married to the spouse designated as the “primary beneficiary” as that term is defined in Section 732.703(1)(f), Florida Statutes.

 _____ (Affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of (month), (year), by (name of person making statement)

(Signature of Notary Public-State of _____)

(Print, Type or Stamp Commissioned name of Notary Public)

Personally known OR Produced Identification) (Type of Identification Produced).

(6) In the case of an asset described in subsection (3)(d) or (e), the payor is not liable for making any payment on account of, or transferring any interest in, the asset to any beneficiary.

(7) Subsections (5) and (6) apply notwithstanding the payor’s knowledge that the person to whom the asset is transferred is different from the person who would own the interest pursuant to subsection (2).

(8) This section does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest by operation of this section, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator or other third party.

RM:6853107:1

166 (9) This section shall be effective for deaths occurring after July 1, 2010.

167 Section 2. This act shall take effect July 1, 2010.

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RM:6853107:1