

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1064

INTRODUCER: Banking and Insurance Committee and Senator Powell

SUBJECT: Wills and Estates

DATE: February 13, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
3.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1064 provides and clarifies procedures to resolve probate disputes regarding property owned by spouses in this state but acquired while the spouses lived in one of the nine community property states.

In a community property state, property acquired during a marriage is presumed to be owned 50/50 by the spouses regardless of how it may be titled. Once the spouses move to this state, state law provides that community property generally retains its status as community property. In 1992, the Legislature adopted the Florida Uniform Disposition of Community Property Rights at Death Act, to provide guidance for preserving the rights of a surviving spouse in any such community property upon a spouse's death if probate is opened in this state.

Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, a recent court case held that probate creditor claim procedures apply to title disputes arising under the Act, including the statute of limitations period and the two-year statute of repose applicable to such claims.

To address these issues, the bill amends and repeals various provisions of the Act, and other related provisions of the Florida Probate Code, to:

- Clarify existing law by exempting title disputes arising under the Act from:
  - The term "claim" as defined in the Florida Probate Code.

- The limitations and the two-year statute of repose applicable to probate creditor claims under the Florida Probate Code.
- Create a new dispute resolution mechanism and two-year statute of repose specifically designed for title disputes arising under the Act.
- Make targeted and narrowly-focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

The bill also ensures the availability of necessary information about deceased individuals is contained in the land records maintained by the Clerks of the Circuit Courts so that proper heirs can be identified in the chain of title, thereby protecting the public interest of certainty in the ownership of real property.

The bill provides that except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law.

## II. Present Situation:

### Community Property

The term “community property” refers to the legal theory, applicable in nine states, that most property owned by a married person is jointly owned with the spouse.<sup>1</sup> Most assets and debts acquired during the marriage are considered community property and are equally owned by both spouses, regardless of in whose name the item is titled.<sup>2</sup>

In community property states, if the couple divorces, each spouse is entitled to one-half of the community assets and debts, including:

- Earned income generated during the marriage.
- Items purchased by either spouse during the marriage.
- Retirement accounts that are created during marriage or the value of contributions made during marriage to pre-existing accounts.
- Bank accounts and investments accumulated during the marriage.
- Separate property that is transferred to joint accounts.
- Separate property transmuted to marital property, such as when one spouse uses their own savings to help buy a family car in both names.<sup>3</sup>

Florida is not a community property state, but a common law property state.<sup>4</sup> Like in most other common law property states, how an asset is titled generally dictates who owns the asset and

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<sup>1</sup> The nine states that have community-property systems are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Also, a community-property regime is elective in Alaska. BLACK’S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

<sup>2</sup> Forbes Advisor, *Community Property States in 2024*, Aug. 23, 2022, <https://www.forbes.com/advisor/legal/divorce/community-property-states/> (last visited February 1, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> See s. 61.075(8), F.S. (providing that “[t]itle to disputed assets shall vest only by the judgment of a court” and that this statute “does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse’s individual property; affect the laws of descent and distribution; or establish community property in this state” (emphasis added)); see

who has the ability to convey it during life or death.<sup>5</sup> For example, in the context of dissolution of marriage proceedings, while state law provides that equal or 50/50 shares may be the proper starting point in making an equitable distribution of marital assets, the distribution need not be equal.<sup>6</sup>

### **Florida Uniform Disposition of Community Property Rights at Death Act**

Although Florida is not a community property state, many residents in the state come from community property states. Florida is the first choice for relocating retirees in the U.S.,<sup>7</sup> the largest recipient of domestic state-to-state migration within the U.S.,<sup>8</sup> and the largest recipient of international migration to the U.S.<sup>9</sup> At least one court has recognized that the testamentary intentions of these new residents should be honored.<sup>10</sup>

Accordingly, the purpose of the Florida Uniform Disposition of Community Property Rights at Death Act (the Act), which the state enacted in 1992,<sup>11</sup> is to statutorily preserve the testamentary “rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their ‘community’ rights.” The Act “thus follows the typical pattern of community property which permits the deceased spouse to dispose of ‘his half’ of the community property, while confirming the title of the surviving spouse in ‘her half.’”<sup>12</sup>

#### ***The Act’s Provisions***

The Act applies to the disposition at death of the following property acquired by a married person:

- Personal property, wherever located, which:

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*also, e.g., Herrera v. Herrera*, 673 So. 2d 143, 144 (Fla. 5<sup>th</sup> DCA 1996) (providing that “Florida is not a community property state”).

<sup>5</sup> Joseph M. Percopo, *Understanding the New Florida Community Property Trust, Part I*, 96 FLA. BAR JOURNAL 4, at 16 (July/Aug. 2022), available at <https://www.floridabar.org/the-florida-bar-journal/understanding-the-new-florida-community-property-trust-part-i/> (last visited February 1, 2024).

<sup>6</sup> See s. 61.075(1), F.S. (noting that “in distributing the marital assets and liabilities between the parties [to a dissolution of marriage proceeding], the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors, including [the listed factors]”); see also *Herrera*, 673 So. 2d at 144 (explaining that application of the statutory factors in s. 61.075, F.S., may result in an unequal distribution).

<sup>7</sup> Andy Markowitz, AARP, *Top 5 States Where Retirees Are Moving*, Jan. 6, 2023, <https://www.aarp.org/retirement/planning-for-retirement/info-2023/most-popular-relocation-states.html> (last visited February 1, 2024).

<sup>8</sup> Net domestic migration for Florida from April 1, 2020 to July 1, 2023 is 818,762 individuals, which exceeds all other states. See Census.gov, *Annual and Cumulative Estimates of the Components of Resident Population Change for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2023 (NST-EST2023-COMP)*, 2023, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html> (last visited February 1, 2024).

<sup>9</sup> Net international migration for Florida from April 1, 2020 to July 1, 2023 is 349,370 individuals, which exceeds all other states. See Census.gov, *Annual and Cumulative Estimates of the Components of Resident Population Change for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2023 (NST-EST2023-COMP)*, 2023, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html> (last visited February 1, 2024).

<sup>10</sup> *Malleiro v. Mori*, 182 So. 3d 5, 10-11 (Fla. 3d DCA 2015).

<sup>11</sup> Chapter 92-200, s. 4, Laws of Fla., codifying ss. 732.216-732.228, F.S.

<sup>12</sup> See Uniform Disposition of Community Property Rights at Death Act (UDCPRDA), *Prefatory Note*, at 3, available at <https://www.uniformlaws.org/viewdocument/act-1971> (last visited February 1, 2024). The Act, with some modifications, is based upon the Uniform Disposition of Community Property Rights at Death Act (UDCPRDA) promulgated in 1971.

- Was acquired as, or became and remained, community property under the laws of another jurisdiction;
- Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or
- Is traceable to that community property.
- Real property, except real property held as tenants by the entirety, which is located in this state, and which:
  - 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
  - Is traceable to that community property.<sup>13</sup>

The Act provides that, upon the death of a married person:

- One-half of the property to which the Act applies is the property of the surviving spouse and *is not* subject to testamentary disposition by the decedent or distribution under the laws of succession in the state.
- One-half of the property is the property of the decedent and *is* subject to testamentary disposition or distribution under the laws of succession of the state.
- The decedent's one-half of the property is not in the elective estate.<sup>14</sup>

Additionally, the Act provides for:

- Rebuttable presumptions.<sup>15</sup>
- Perfection of title of the:
  - Personal representative or beneficiary.<sup>16</sup>
  - Surviving spouse.<sup>17</sup>
- Rights of a purchaser for value or lender.<sup>18</sup>
- Creditors' rights.<sup>19</sup>
- Acts of married persons with regard to severing or altering their interests in property subject to the Act.<sup>20</sup>
- Limitations on testamentary disposition.<sup>21</sup>

The Act also defines the term "homestead" for the purpose of its provisions<sup>22</sup> and concludes with a declaration that its provisions are to be so applied and construed as to effectuate their general purpose to make uniform the law with respect to the subject of the Act among those states that enact it.<sup>23</sup>

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<sup>13</sup> Section 732.217, F.S.

<sup>14</sup> Section 732.219, F.S.

<sup>15</sup> Section 732.218, F.S.

<sup>16</sup> Section 732.221, F.S.

<sup>17</sup> Section 732.223, F.S.

<sup>18</sup> Section 732.222, F.S.

<sup>19</sup> Section 732.224, F.S.

<sup>20</sup> Section 732.225, F.S.

<sup>21</sup> Section 732.226, F.S.

<sup>22</sup> Section 732.227, F.S.

<sup>23</sup> Section 732.228, F.S.

***Johnson v. Townsend***

In 2018, the Fourth District Court of Appeal decided *Johnson v. Townsend*.<sup>24</sup> In that case, the court concluded that state probate creditor claim procedures apply to title disputes arising under the Act, which arguably resulted in the unintended forfeiture of the surviving spouse's property rights.<sup>25</sup> The court reasoned that the surviving spouse's attempt to confirm her pre-existing right to "her half" of property to which the Act applied was a form of probate creditor "claim," as that term was defined under state law,<sup>26</sup> and therefore subject to the limitations period and the two-year statute of repose<sup>27</sup> applicable to creditor claims.<sup>28</sup>

The Real Property, Probate & Trust Law Section of The Florida Bar has noted that nowhere within the text of the Act, or in any other provision of the Florida Probate Code,<sup>29</sup> is it stated that the state's probate creditor claim procedures apply to title disputes arising under the Act.<sup>30</sup> Nor does such application comport with the Act's existing statutory scheme, which explicitly states that one-half of the property to which the Act applies – regardless of who holds title – belongs to the surviving spouse.<sup>31</sup> Accordingly, the section has taken the position that the effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court's ruling.<sup>32</sup>

**Recordation of Probate Records**

State law<sup>33</sup> requires the Clerks of the Circuit Courts to record certain specified documents in the Official Records. They include:

- Wills and codicils admitted to probate.
- Orders revoking the probate of any wills and codicils.
- Letters of administration.
- Orders affecting or describing real property.
- Final orders.
- Orders of final discharge.
- Orders of guardianship.<sup>34</sup>

No other petitions, pleadings, papers, or other orders relating to probate matters may be recorded except on the written direction of the court.<sup>35</sup>

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<sup>24</sup> 259 So. 3d 851 (Fla. 4<sup>th</sup> DCA 2018).

<sup>25</sup> *Id.* at 859.

<sup>26</sup> Section 731.201(4), F.S.

<sup>27</sup> Section 733.702(1), F.S.

<sup>28</sup> *Id.* at 853-59.

<sup>29</sup> Chapters 731-735, F.S. *See s. 731.005, F.S.* (providing a short title for the Florida Probate Code).

<sup>30</sup> Real Property, Probate & Trust Law Section of the Florida Bar, *White Paper: The Johnson v. Townsend Fix, Florida Uniform Disposition of Community Property Rights at Death Act (Sections 732.216-732.228, Florida Statutes)*, at 5, undated (on file with the Senate Committee on Judiciary).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Section 28.223, F.S.

<sup>34</sup> Section 28.223(1), F.S.

<sup>35</sup> *Id.*

Most of the documents that must be recorded do not list the heirs in an estate.<sup>36</sup> In a testate estate, the will and any codicils are recorded, thereby evidencing the heirs to an estate, but there are situations where the beneficiaries named in the will differ from the heirs or beneficiaries indicated in the petition, due to (for example):

- The death of a beneficiary.
- An invalid devise of homestead property.
- Disclaimers.
- Non-existent beneficiaries (*e.g.* an incorrectly named charity).<sup>37</sup>

In an intestate estate, there is no will to record, so there is often no indication in the land records of who the heirs to the estate are. The only resource available to determine heirs is to physically appear at the Clerk of the Circuit Court's office and inspect the court docket. However, clerks often destroy court documents, in some cases as soon as 10 years after the case is closed, thereby eliminating publicly accessible documents that could provide vital information regarding the heirs to an intestate estate. For the heirs or their descendants to later convey property owned by the decedent, a costly court determination of heir may be required.<sup>38</sup>

### III. Effect of Proposed Changes:

#### Florida Uniform Disposition of Community Property Rights at Death Act

Nothing in the Florida Disposition of Community Property Rights Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, the *Johnson* court held that probate creditor claim procedures do apply to title disputes arising under the Act, including the statute of limitations period and the two-year statute of repose applicable to such claims.

The bill amends and repeals various provisions of the Act, and other related provisions of the Florida Probate Code, to provide that probate creditor claim procedures should not apply to title disputes arising under the Act.

**Section 2** of the bill amends s. 732.217, F.S., which identifies the property acquired by a married person to which the Act applies at his or her death, to clarify that personal property held as tenants by the entirety<sup>39</sup> and homestead property is not property to which the Act applies.

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<sup>36</sup> Real Property, Probate & Trust Law Section of the Florida Bar, *White Paper: Proposal to Amend s. 28.223, Fla. Stat. (Probate Records; recordation)*, at 1, undated (on file with the Senate Committee on Judiciary).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> “A tenancy by the entireties, as defined by applicable Florida law, is a unique form of property ownership that only married couples may enjoy. Generally, an estate by the entireties is the estate created at common law by a conveyance or a devise of property to spouses. By reason of their legal unity by marriage, the married couple takes the whole estate as a single person with the right of survivorship as an incident thereto so that if one dies, the entire estate belongs to the other by virtue of the original title. ... In a tenancy by the entireties, both parties are obligated for the whole of any expenses or debt on the property, including mortgage payments and insurance. However, in Florida, property held by a tenancy by the entireties is exempt from process to satisfy individual obligations of either spouse and may be reached only by a joint creditor of both spouses.” 12 FLA. JUR. 2D, *Cotenancy and Partition* s. 18.

**Section 3** of the bill amends s. 732.218, F.S., which identifies rebuttable presumptions used to determine whether the Act applies to specific property, to eliminate an unnecessary double negative.

**Section 4** of the bill amends s. 732.219, F.S., which governs the disposition of property upon death, to clarify existing law and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

Specifically, the bill:

- Clarifies that one-half of the property to which the Act applies is not property of the decedent's probate estate.
- Clarifies that one-half of the property to which the Act applies is the decedent's probate estate.
- Defines the term "probate estate" to mean all property wherever located that is subject to estate administration in any state of the U.S. or in the District of Columbia.

The bill also incorporates waiver language, providing that if not previously waived pursuant to state law,<sup>40</sup> the right of a surviving spouse to assert a claim arising under the Act, to any right, title, or interest in any property held by the decedent at the time of his or her death may be waived, wholly or partly, by a written contract, agreement, or waiver, signed by the surviving spouse, or any person acting on behalf of a surviving spouse, including, but not limited to, an attorney in fact; agent; guardian of the property; or personal representative, if the written contract, agreement, or waiver includes the following or substantially similar language:

By executing this contract, agreement, or waiver, I intend to waive my right as a surviving spouse to assert a claim to any right, title, or interest in property held by the decedent at the time of the decedent's death arising under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228, Florida Statutes), wholly or partly, as provided herein.

**Section 5** of the bill repeals s. 732.221, F.S., which authorizes the personal representative or a beneficiary of the decedent to institute an action to perfect title to property held by the surviving spouse at the time of the decedent's death.

**Section 6** of the bill creates s. 732.2211, F.S., entitled "Demands or disputes; statute of repose," which in effect replaces s. 732.221, F.S., to address the uncertainties created by the *Johnson v. Townsend* decision.

Specifically, the bill provides that any demand or dispute arising, wholly or partly, under the Act, regarding any right, title, or interest in any property held by the decedent or surviving spouse at the time of the decedent's death must be determined in an action for declaratory relief governed by the rules of civil procedure. Notwithstanding any other law, a complaint for such action must be filed within two years after the decedent's death or be forever barred. An action for declaratory relief instituted pursuant to the dispute resolution procedures in this section is not a

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<sup>40</sup> See s. 732.702, F.S. (authorizing the waiver of spousal rights in connection with contractual arrangements relating to death).

claim, as defined in the Florida Probate Code, and is not subject to part VII of chapter 733, F.S., relating to Creditors' Claims.

The bill also provides that the personal representative or curator has no duty to discover whether property held by the decedent or surviving spouse at the time of the decedent's death is property to which the Act applies, or may apply, unless a written demand is made by:

- The surviving spouse or a beneficiary within six months after service of a copy of the notice of administration on the surviving spouse or beneficiary.
- A creditor, except as provided in the next paragraph, within three months after the time of the first publication of the notice to creditors.
- A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or the time under the previous paragraph.

The bill also provides that the rights of any interested person who fails to timely file an action for declaratory relief pursuant to this section are forfeited. The decedent's surviving spouse, personal representative or curator, or any other person or entity that at any time is in possession of any property to which the act applies, or may apply, may not be subject to liability for any such forfeit rights. The decedent's personal representative or curator may distribute the assets of the decedent's estate without liability for any such forfeit rights.

The bill provides that the section does not affect any issue or matter not arising, wholly or partly, under the Act.

**Section 7** of the bill repeals s. 732.223, F.S., which authorizes the probate court to perfect title to property held by the decedent at the time of the decedent's death in the surviving spouse, by an order of the court or by execution of an instrument by the personal representative or beneficiaries of the decedent with approval of the court.

**Section 8** of the bill creates s. 732.2231, F.S., entitled "Protection of payors and other third parties," which in effect replaces s. 732.223, F.S., to establish new protections for third parties transferring property subject to the Act.

The bill provides that a property interest is subject to property rights under the Act; however, a payor or other third party is not liable for paying, distributing, or transferring such property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

The bill also defines the following terms for purposes of this section:

- "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.<sup>41</sup>
- "Payor" means the decedent's personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or

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<sup>41</sup> See s. 732.2025(4), F.S. (defining same for purposes of the bill).



subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

- “Person” includes an individual, trust, estate, partnership, association, company, or corporation.<sup>42</sup>

**Section 9** of the bill amends s. 732.225, F.S., which regulates the acts of married persons, to provide that the reinvestment of any property covered by the Act, in real property in this state which becomes real or personal property held by tenants by the entirety, creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

**Section 10** of the bill amends s. 732.702, F.S., which regulates the waiver of spousal rights in connection with contractual arrangements relating to death, to make the right of a surviving spouse to assert a claim under the Act waivable, in whole or in part, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses.

**Section 11** of the bill amends s. 733.212, F.S., which regulates notices of administration and the filing of objections in connection with commencing the administration of probate, to require such notices to state that the personal representative or curator has no duty to discover whether any property held at the time of the decedent’s death by the decedent or the decedent’s surviving spouse is property to which the Act applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary as specified under the bill.<sup>43</sup> Currently, notices of administration do not provide notice of the deadlines triggered under the Act.

**Section 12** of the bill amends s. 733.2121, F.S., which regulates notices to creditors and the filing of claims in connection with commencing the administration of probate, to require such notices to state that a personal representative or curator has no duty to discover whether any property held at the time of the decedent’s death by the decedent or the decedent’s surviving spouse is property to which the Act applies, or may apply, unless a written demand is made by a creditor as specified under the bill.<sup>44</sup> Currently, notices to creditors do not provide notice of the deadlines triggered under the Act.

**Section 13** of the bill amends s. 733.607, F.S., which regulates the possession of estates in connection with the duties and powers of personal representatives, to provide that notwithstanding anything in the section, the personal representative has no right to, and may not knowingly take possession or control of, a surviving spouse’s one-half share of property to which the Act applies. This amendment is intended to address the uncertainties created by the *Johnson v. Townsend* decision.

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<sup>42</sup> See s. 732.2025(6), F.S. (defining same for purposes of the bill).

<sup>43</sup> Specifically, s. 6 of the bill creating s. 732.2211, F.S.

<sup>44</sup> *Id.*

## Recordation of Probate Records

**Section 1** of the bill amends, effective January 1, 2025, s. 28.223, F.S., which governs the recordation of probate records, to require the clerk of the circuit court to record (in addition to other documents) orders admitting the will to probate and orders determining beneficiaries.

By requiring these documents affecting the inheritance of real property to be recorded, evidence of heirship will be preserved in the Official Records, where documents are not destroyed and should be easily and publicly accessible to anyone searching title as to the real property.

## Effective Date

**Section 14** of the bill provides that except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

None.

### E. Other Constitutional Issues:

The “announced public policy of this state ... requires that estates of decedents be speedily and finally determined.”<sup>45</sup> To that end, the bill creates a new dispute resolution mechanism and two-year statute of repose specifically designed for title disputes arising under the Act.<sup>46</sup>

To the extent these changes result in forfeiture of pre-existing testamentary property rights, they are a valid and constitutional exercise of the state’s police power in service of

<sup>45</sup> *In re Estate of Gay*, 294 So. 2d 668, 670 (Fla. 4<sup>th</sup> DCA 1974).

<sup>46</sup> A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 695 (Fla. 2015) (internal citation and quotations omitted).

a legitimate and reasonably related public policy favoring the speedy and final determination of estate proceedings.<sup>47</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will lower or eliminate the cost of determining heirs after probate documents have been destroyed by the Clerks of the Circuit Court due to the passage of time. The bill provides recorded evidence as to the ownership of real property passing through probate in accordance with the successions laws of this state, thereby avoiding economic loss to the true heirs of the real property and their descendants. Creditor's rights are also affected by the enhanced ability to identify a debtor's interest in real property.

C. Government Sector Impact:

The bill will increase, to some degree, the cost of storing recorded documents. It is anticipated this cost is minimal and will be absorbed by the Clerk of Circuit Courts' existing budgets.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.223, 732.217, 732.218, 732.219, 732.225, 732.702, 733.212, 733.2121, and 733.607.

This bill creates the following sections of the Florida Statutes: 732.2211 and 732.2231.

This bill repeals the following sections of the Florida Statutes: 732.221 and 732.223.

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<sup>47</sup> See *In re Estate of Magee*, 988 So. 2d 1, 5-6 (Fla. 1<sup>st</sup> DCA 2007) (holding that the elective share statute, in permitting a decedent's spouse to accept a statutory share, rather than a testamentary share, of decedent's estate, was rationally related to the legitimate legislative purpose of safeguarding the public welfare, and thus did not violate the state constitutional provision protecting the possession of property).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 6, 2024:**

The committee substitute:

- Removes language in the bill that required the Clerk to record petitions affecting or describing real property; and
- Provides that an action for declaratory relief is not subject to part VII of chapter 733, F.S, relating to Creditors' Claims.

- B. **Amendments:**

None.