



The Florida Bar

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REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (SBP 9.11) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee’s white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
 - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
 - If comments have been received from another interested group, the comments must be included.
 - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
 - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
 - The proposal will then need to be presented at the Division Round Table.
 - Then, published as an Information Item to the Executive Council.
 - Then, published as an Action Item to the Executive Council.

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General Information

Submitted by: *(name of Section Committee)* Charitable Planning and Exempt Organizations Committee, Insurance, IRA and Employee Benefits Committee

Contact: *(Name of Committee Chair(s), address and phone number)* Alyssa Razook Wan, 201 S Biscayne Blvd, FL 20, Miami, FL 33131 (305) 789-9200 (Charitable Planning); Chad Callahan (Insurance IRA)

(Name of Sub-committee Chair, if any, address and phone number, if any) Denise B. Cazobon, 4001 Tamiami Trail N., Ste. 200, Naples, FL 34113

Proposed Advocacy

Complete #1 below if the issue is legislative OR #2 if the issue is political; AND #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Supports legislation creating a process for charitable organizations listed as beneficiaries in instruments designating a beneficiary, other than a will or an instrument creating a trust, seeking information or the transfer of property to effectively and efficiently obtain such information or property without the need to provide any personal information for any individual employed by or serving on the board of the charitable organization or become an account owner with the holder of the property.

2. Political Proposal

3. Reasons For Proposed Advocacy

a. Per SBP 9.50(a), does the proposal meet all three of the following requirements? *(select one)* ☒ Yes ☐ No

- It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
- It is beyond the scope of the Section/Bar's permissible legislative or political activity, or within the Section/Bar's permissible scope of legislative or political activity and consistent with an official Section/Bar position on that issue; and
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the Bar's membership.

b. Additional Information: _____

Referrals to Other Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. **List** all Bar committees, divisions, sections and voluntary bar **groups that this proposal has been shared with** pursuant to this requirement, **the date the proposal was shared**, and **provide all comments** received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

Contacts

Legislation Committee Appearance *(list name, address and phone #)*
S. Dresden Brunner, Legislation Committee Co-Chair, Harrison LLP, 8625 Tamiami Trail N., Ste. 202, Naples, FL 34108 (239) 316-1400

Lee A. Weintraub, Legislation Committee Co-Chair, Becker, 1 E. Broward Blvd, Ste. 1800, Fort Lauderdale, FL 33301 (954) 985-4147

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*
Peter M. Dunbar and H. French Brown, IV, c/o Jones Walker, 106 East College Ave, Ste 1200, Tallahassee, FL 32301, Telephone (850) 214-5100
Martha J. Edenfield, Martha J. Edenfield, P.A., 1700 Monroe St., Ste. 11-174, Tallahassee, FL 32303-0501, (850) 556-8611

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

**WHITE PAPER
PROPOSED ENACTMENT OF
SECTION 732.704, FLORIDA STATUTES**

**CHARITABLE ORGANIZATION BENEFICIARY AFFIDAVIT AND THIRD-PARTY
PROTECTION**

I. SUMMARY

The proposed legislation would enact Section 732.704, Florida Statutes, to provide that the holder of property payable to a charitable organization by reason of a beneficiary designation must provide the charitable organization with the property payable to the charitable organization and/or information regarding the property payable to the charitable organization, within 60 days of receipt of an affidavit and certain supporting documents. The proposed legislation prohibits the holder of the property from requiring that the charitable organization (i) provide any personal information from any individual employed by or serving on the board of the charitable organization, or (ii) open an account with or become a customer of the holder of the property as part of the process for transferring the property. The proposed legislation requires that the holder of the property accept or reject the charitable organization's authority within a reasonable time, but in any event not more than 60 days from receipt of the affidavit and supporting documents, and provides the charitable organization with a cause of action if the information or property requested is not provided within the time permitted.

II. CURRENT SITUATION

There are no federal or state laws prescribing the method or timeline for financial institutions and insurance companies to transfer property to a charitable organization pursuant to a beneficiary designation for a decedent's retirement account, transfer- or payable-on-death account, life insurance policy or any other nonprobate transfer at death. A number of institutions and insurance companies distribute the property subject to a beneficiary designation directly to the named beneficiary, usually within thirty days from the beneficiary's submission of a claim form for the property.

However, in recent years, certain financial institutions have instituted business practices that arbitrarily require the designated beneficiary to become a new customer of the financial institution and open a new account in order for the named beneficiary to collect the property payable to that beneficiary. There is no requirement under federal law that the beneficiary named in a beneficiary designation must open a new account with the holder of the property in order to collect the property payable to that beneficiary.¹ In fact, charitable organizations

¹ In an administrative ruling issued on March 15, 2024, the Financial Crimes Enforcement Network (FinCEN) clarified that the establishment of a new account is not required in order to comply with regulatory obligations and stated that "the [Bank Secrecy Act] and its implementing regulations do not require institutions to open new accounts, as a risk-based internal control or otherwise." See Request for Administrative Ruling Regarding Customer Identification Program

prefer to collect the funds immediately in order to either fund charitable programs or add the funds to the their existing investment accounts.

The business practice imposed by certain financial institutions that requires a named beneficiary to open a new account poses three problems to charitable organizations:

1. In order to establish the new account, the charitable organization is required to provide personal information for its directors, officers and certain employees. There is no consistency among the various institutions as to the information required to be provided for each director, officer and employee, and can include any of the following: the individual's name, home address, home phone number, date of birth, social security number, driver's license number, passport, marital status, value of personal assets and source of wealth and completion of credit and criminal background checks. The practice exposes the personal information of these individuals, who are often volunteers, to unnecessary risk, particularly in cases where the financial institution loses or misplaces the information submitted by the charitable organization.
2. The process of opening the new account, and subsequently liquidating the account, can be an administrative and economic burden to the charitable organization, especially those charitable organizations that are staffed by volunteers. The charitable organization may receive multiple gifts every year and can be forced to go through the same process for every account payable to the charitable organization. Because there is no uniformity among the various institutions with respect to the forms or the information required from the charitable organization, the charitable organization is forced to spend time and resources compiling the information and supporting documents needed to complete the voluminous forms required for the opening of each new account. The time and resources spent opening up numerous unnecessary accounts could have been better spent carrying out the organization's mission. Further, the charitable organization can be forced to unnecessarily incur new account fees and subsequent fees to liquidate and close out the account that it was forced to open.
3. The process often results in delays in the charitable organization receiving the property, as the process can take anywhere from one to two years and multiple submissions to complete. The charitable organization loses the benefit of the income that could have been earned on the property during such time, income that could have been used towards meeting community needs.

III. EFFECT OF PROPOSED CHANGES

The proposed legislation would enact new Section 732.704, Florida Statutes, under Part VII of Chapter 732 of the Florida Probate Code, which addresses contractual arrangements relating to death. The proposed legislation would facilitate the timely and efficient transfer of

and Customer Due Diligence Requirements for Designated Beneficiaries of Individual Retirement Accounts, FIN-2024-R001, March 15, 2024.

property subject to a beneficiary designation to charitable organizations. Under the proposed legislation, the named charitable organization may submit to the holder of the property an affidavit, together with certain supporting documents, requesting either the transfer of the property payable to the charitable organization and/or information regarding the property payable to the charitable organization. The holder of the property would be required to respond to the affidavit within a reasonable time, but in any event not more than 60 days of receipt of the affidavit containing the request for information or transfer of the property and the supporting documents.

Under the proposed legislation, the holder of the property would not be allowed to require that the charitable organization provide any personal information from any individual employed by or serving on the board of the charitable organization or open an account with or become a customer of the holder of the property as part of the process for transferring the property.

The proposed legislation would provide protection from liability for the holder of the property and any person who in good faith delivers the property or information to the charitable organization in reliance on the information provided by the charitable organization. It also provides the charitable organization with a cause of action should the property or information requested by the charitable organization not be received within a reasonable time.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS – None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposed legislation will facilitate the timely and efficient transfer of assets subject to a beneficiary designation to charitable organizations named as beneficiaries, allowing charitable organizations to utilize those funds towards their charitable purpose sooner while reducing the administrative burden on the organization's staff.

VI. CONSTITUTIONAL ISSUES – None apparent.

VII. OTHER INTERESTED PARTIES – The Florida Bankers Association and the Florida Securities Dealers and Advisors.

1 A bill to be entitled

2 An act relating to property to be paid to a charitable
3 organization by reason of a beneficiary designation;
4 creating s. 732.704; defining terms; providing that a
5 charitable organization that is a beneficiary of an
6 interest in property by reason of a beneficiary designation
7 may present an affidavit and supporting documents to the
8 holder of the property for purposes of obtaining the
9 property or information about the property; providing the
10 information required to be included in the affidavit;
11 providing the supporting documents required to accompany
12 the affidavit; requiring the holder of the property to
13 provide the name of the decedent if the holder of the
14 property notifies the charitable organization that it is a
15 beneficiary of an interest in property by reason of a
16 beneficiary designation; prohibiting the holder of the
17 property from requiring any personal information from any
18 individual employed by or serving on the board of directors
19 of the charitable organization or from requiring that the
20 charitable organization open an account or otherwise become
21 a customer of the holder of the property; providing that if
22 the requirements are satisfied, the property shall be paid,
23 delivered or transferred to or for the benefit of the
24 charitable organization or the information requested in the
25 affidavit shall be delivered to the charitable

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organization; providing protection from liability for any holder of the property and any person who in good faith delivers the property or information requested in the affidavit; requiring that the holder of the property must accept or reject the charitable organization's authority within a reasonable time, but not more than 60 days from receipt of the affidavit and all supporting documents; providing that if the holder of the property rejects the charitable organization's authority, the holder of the property must state the reason in a writing provided to the charitable organization; providing a cause of action and remedies for the charitable organization if the holder of the property refuses to provide the requested property or information within a reasonable time; providing an effective date and applicability to existing pending claims.

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

Section 1. Section 732.704, Florida Statutes, is created to read:

732.704 Charitable organization beneficiary affidavit and third-party protection.

(1) For the purposes of this section, the term:

(a) "Beneficiary designation" means the provision in an instrument designating a beneficiary, other than in a will

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51 or an instrument creating a trust, and may also mean the
52 instrument itself, including but not limited to any of the
53 following:

54 1. An annuity or insurance policy.

55 2. An account with a designation for payment or transfer on
56 death.

57 3. A security registered in beneficiary form.

58 4. A pension, profit-sharing, retirement, or other
59 employment-related benefit plan.

60 5. Any other nonprobate transfer at death.

61 (b) "Charitable organization" means an organization
62 described in s. 501(c)(3) of the Internal Revenue Code and
63 exempt from tax under s. 501(a) of the Internal Revenue
64 Code and that does business in this state or holds property
65 in this state. In the case of a donor advised fund, the
66 term "charitable organization" in this section shall refer
67 to the sponsoring organization of the donor advised fund.

68 (2) If a charitable organization is a beneficiary of an
69 interest in property by reason of a beneficiary
70 designation, that charitable organization may present an
71 affidavit to the holder of the property or to any person
72 with information about the property for the purpose of
73 obtaining the property or information regarding the
74 property. The affidavit shall state all of the following:

75 (a) The decedent's name and, if known to the charitable
76 organization, last known address.

77 (b) A general description of the property to the extent
78 known.

79 (c) The charitable organization's name, address, and
80 primary contact information.

81 (d) The charitable organization is a charitable
82 organization as defined under this section.

83 (e) A request that the property be paid or transferred to
84 the charitable organization or that information about the
85 property be given to the charitable organization.

86 (f) To the best of affiant's knowledge and belief, the
87 charitable organization has a right to an interest in the
88 property listed in the affidavit.

89 (g) The affidavit has been signed by a duly authorized
90 representative of the charitable organization under penalty
91 of perjury before a notary public.

92 (h) The information in the affidavit is true and correct.

93 (3) The affidavit shall be accompanied by all of the
94 following:

95 (a) A copy of the charitable organization's determination
96 letter from the Internal Revenue Service recognizing its
97 tax-exempt status, if the charitable organization is
98 required to obtain a determination letter.

99 (b) If the charitable organization is organized as an
100 entity created by the filing of a document with a secretary
101 of state or any similar office, a copy of the charitable
102 organization's certificate of existence issued by the
103 secretary of state or similar office as conclusive evidence
104 that the charitable organization is in good standing. If
105 the charitable organization is organized as a trust, a
106 certification of trust executed in conformity with s.
107 736.1017.

108 (c) A statement that on information or belief of the
109 affiant, the property owner is deceased supported by a
110 death certificate of the decedent, or probate notice
111 published by the personal representative of the decedent's
112 estate, or proof of payment of the decedent's funeral
113 expenses, or the decedent's obituary as verification of the
114 decedent's death.

115 (d) A corporate resolution or similar statement of
116 authority of the affiant to act on behalf of the charitable
117 organization.

118 (e) Federal Internal Revenue Service Form W-9 completed by
119 an authorized representative of the charitable
120 organization.

121 (4) If the holder of the property notifies the charitable
122 organization of the fact that the charitable organization
123 is a beneficiary of an interest in property by reason of a

beneficiary designation, the holder of the property must provide the name of the decedent to the charitable organization.

(5) The holder of the property shall not require:

(a) any personal information from any individual employed by, or serving on the board of the charitable organization, including but not limited to an individual's Social Security number, or driver's license number, date of birth, contact information or personal financial information; or

(b) the charitable organization to open an account with or otherwise become a customer of the holder of the property.

(6) If the requirements of this section are satisfied, all of the following apply:

(a) The decedent's property shall be paid, delivered, or transferred to or for the benefit of the charitable organization if the affiant has requested the transfer of ownership of the property to the charitable organization.

(b) A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to or for the benefit of the charitable organization if the affiant has requested the transfer of ownership of the property to the charitable organization.

(c) The information requested in the affidavit shall be delivered to the charitable organization.

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149 (7) The holder of the property and any person who in good
150 faith delivers the property or information requested in
151 reliance on information a charitable organization provides
152 under this section, who has no knowledge that
153 representations contained in the affidavit are incorrect,
154 shall not be liable to any person for so acting and may
155 assume without inquiry the existence of the facts contained
156 in the affidavit.

157 (8) Any right or title acquired from the charitable
158 organization in consideration of the provision of property
159 or information under this section is not invalid in
160 consequence of misapplication by the charitable
161 organization. A transaction and a lien created by a
162 transaction entered into by the charitable organization and
163 anyone acting in reliance on the affidavit under this
164 section is enforceable against the property the charitable
165 organization has requested.

166 (9) The holder of the property must accept or reject the
167 charitable organization's authority within a reasonable
168 time, but in any event not more than 60 days from receipt
169 of the affidavit containing the request for information or
170 payment or transfer of the property and all supporting
171 documents that may be required under subsection (3). If
172 the holder of the property rejects the charitable
173 organization's authority, the holder of the property must

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174 state the reason for the rejection in a writing provided to
175 the charitable organization within the time provided under
176 this subsection.

177 (10) If the holder of the property refuses to provide the
178 requested property or information within a reasonable time,
179 the charitable organization may bring an action against the
180 holder of the property to recover the property or receive
181 the information or to compel the delivery of the property.

182 An action brought under this section must be brought within
183 one year after the date of the refusal by the holder of the
184 property to provide the requested property or information.

185 If the charitable organization does not bring an action
186 within one year after the date of the refusal, the holder
187 of the property may require that the charitable
188 organization resubmit the documents required under
189 subsections (2) and (3) as of a more current date. If the
190 court finds that the holder of the property acted
191 unreasonably in failing to deliver the property or
192 information as requested in the affidavit, the court may
193 award to the charitable organization any or all of the
194 following:

195 (a) Damages sustained by the charitable organization.

196 (b) Costs of the action.

197 (c) A penalty in an amount determined by the court between
198 five hundred dollars and ten thousand dollars.

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199 (d) Reasonable attorney fees based on the value of the time
200 reasonably expended by the attorney and not by the amount
201 of the recovery on behalf of the charitable organization.

202 Section 2. This act shall take effect on July 1, 20__
203 and shall apply to all claims pending before such date and
204 all claims submitted on or after the effective date.