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The 2020 Florida Statutes

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ESTATES AND TRUSTS PROBATE CODE: INTESTATE SUCCESSION AND WILLS

732.603 Antilapse; deceased devisee; class gifts. –

(1) Unless a contrary intent appears in the will, if a devisee who is 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 or by operation of law to be treated as having predeceased the testator,

a substitute gift is created in the devisee's surviving descendants who take per stirpes the property to which the devisee would have been entitled had the devisee survived the testator.

(2) When a power of appointment is exercised by will, unless a contrary intent appears in the document creating the power of appointment or in the testator's will, if an appointee who is a grandparent, or a descendant of a grandparent, of the donor of the power:

- (a) Is dead at the time of the execution of the will or the creation of the power;
- (b) Fails to survive the testator; or
- (c) Is required by the will, the document creating the power, or by operation of law to be treated as having predeceased the testator,

a substitute gift is created in the appointee's surviving descendants who take per stirpes the property to which the appointee would have been entitled had the appointee survived the testator. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an object of a power for the object, a surviving descendant of a deceased object of a power of appointment may be substituted for the object whether or not the descendant is an object of the power.

(3) In the application of this section:

(a) Words of survivorship in a devise or appointment to an individual, such as "if he survives me," "if she survives me," or to "my surviving children," are a sufficient indication of an intent contrary to the application of subsections (1) and (2). Words of survivorship used by the donor of the power in a power to appoint to an individual, such as the term "if he survives the donee" or "if she survives the donee," or in a power to appoint to the donee's "then surviving children," are a sufficient indication of an intent contrary to the application of subsection (2).

(b) The term:

1. "Appointment" includes an alternative appointment and an appointment in the form of a class gift.
2. "Appointee" includes:
 - a. A class member if the appointment is in the form of a class gift.
 - b. An individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator.
3. "Devise" also includes an alternative devise and a devise in the form of a class gift.
4. "Devisee" also includes:
 - a. A class member if the devise is in the form of a class gift.

b. An individual or class member who was deceased at the time the testator executed his or her will as well as an individual or class member who was then living but who failed to survive the testator.

(4) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to s. [736.1106](#).

History.—s. 1, ch. 74-106; s. 36, ch. 75-220; s. 967, ch. 97-102; s. 51, ch. 2001-226; s. 6, ch. 2003-154; s. 33, ch. 2006-217; s. 159, ch. 2020-2.

Note.—Created from former s. 731.20.

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